

EXHIBIT

41

Wolfgang Vorbeck August 10, 2005

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2	UNITED STATES DISTRICT COURT	
3	DISTRICT OF MASSACHUSETTS	
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6	BRAUN GmbH, Plaintiff	
7	v. Civil Action	
8	RAYOVAC CORPORATION, No.	
9	Defendant 03-CV-12428-WGY	
10		
11		
12	DEPOSITION of WOLFGANG VORBECK	
13	Wednesday, August 10, 2005	
14	9:23 a.m.	
15	Dwyer & Collora	
16	600 Atlantic Avenue	
17	Boston, Massachusetts	
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21		
22		
23		
24	Melissa Z. Comins, RPR and CSR No. 132293	
		Page 2
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19		
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21	Jason LaChapelle, Videographer.	
22		
23		
24		
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<p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Here begins</p> <p>4 videotape No. 1 in the deposition of</p> <p>5 Wolfgang Vorbeck in the matter of Braun versus</p> <p>6 Rayovac in the United States District Court for the</p> <p>7 District of Massachusetts, Case No. 03-CV-12428-WGY.</p> <p>8 Today's date is August 10, 2005. The</p> <p>9 time on the video monitor is 9:24. The video</p> <p>10 operator today is Jason LaChapelle contracted by</p> <p>11 LegalLink Boston, 320 Congress Street, Boston,</p> <p>12 Massachusetts.</p> <p>13 This deposition is taking place at</p> <p>14 Dwyer & Collora, 600 Atlantic Avenue, Boston,</p> <p>15 Massachusetts, and was noticed by James Shimoto and</p> <p>16 Kirkland & Ellis.</p> <p>17 Counsel, please voice identify</p> <p>18 yourselves and state whom you represent.</p> <p>19 MR. SHIMOTO: James Shimoto of</p> <p>20 Kirkland & Ellis appearing on behalf of Rayovac</p> <p>21 Corporation.</p> <p>22 MS. WENDLANDT: Dalila Wendlandt of</p> <p>23 Ropes & Gray appearing on behalf of Braun GmbH.</p> <p>24 THE VIDEOGRAPHER: The court reporter</p>	<p>Page 5</p> <p>1 A. My address is Germany, the village is</p> <p>2 Idstein, ZIP code 65510, and the street is</p> <p>3 Pfahlgassestrasse No. 69.</p> <p>4 THE INTERPRETER: Do you want me to</p> <p>5 spell that?</p> <p>6 THE COURT REPORTER: Isn't that where</p> <p>7 you -- yes.</p> <p>8 (The witness talks</p> <p>9 with the interpreter.)</p> <p>10 THE INTERPRETER: The name of the</p> <p>11 location is spelled I-D as in David, S as in Sam, T</p> <p>12 as in Tom E-I-N.</p> <p>13 The name of the street is P as in</p> <p>14 Paul, F as in Frank, A as in Alpha, H as in Henry, L</p> <p>15 as in Lily, G as in George, R as in Richard, A as in</p> <p>16 boy, E as in England, N as in Nancy, S as in Sam, T</p> <p>17 as in Tom, R as in Richard A-S-S-E No. 69.</p> <p>18 Q. Have you ever been deposed before,</p> <p>19 Mr. Vorbeck?</p> <p>20 A. No.</p> <p>21 Q. Okay. Before we begin, there's a few</p> <p>22 preliminaries I'd like to go through.</p> <p>23 You understand that during the course</p> <p>24 of today, I'm going to ask you questions and you</p>
<p>1 today is Melissa Comins of LegalLink Boston.</p> <p>2 Would the translator please state your</p> <p>3 name for the record.</p> <p>4 THE INTERPRETER: It's the</p> <p>5 interpreter, my name is Lily Olm.</p> <p>6 THE VIDEOGRAPHER: And would the</p> <p>7 reporter please swear in the interpreter and the</p> <p>8 witness.</p> <p>9 (Interpreter sworn.)</p> <p>10</p> <p>11 WOLFGANG VORBECK,</p> <p>12 a witness called for examination by counsel for the</p> <p>13 Defendant, having been satisfactorily identified and</p> <p>14 duly sworn by the Notary Public, was examined and</p> <p>15 testified as follows:</p> <p>16</p> <p>17 DIRECT EXAMINATION</p> <p>18 BY MR. SHIMOTO:</p> <p>19 Q. Good morning.</p> <p>20 A. Good morning.</p> <p>21 Q. Would you please state your name for the</p> <p>22 record?</p> <p>23 A. My name is Wolfgang Vorbeck.</p> <p>24 Q. And would you also provide your address?</p>	<p>Page 6</p> <p>1 will provide me with answers to the best of your</p> <p>2 ability; is that correct?</p> <p>3 A. Yes, yes.</p> <p>4 Q. If during the course of the day you do not</p> <p>5 understand any of my questions, would you please</p> <p>6 tell me?</p> <p>7 A. Yes.</p> <p>8 Q. And if also at some point during the day</p> <p>9 you come to believe that your</p> <p>10 testimony -- that -- let me start again.</p> <p>11 If during the course of the day you</p> <p>12 come to believe that your prior testimony is either</p> <p>13 inaccurate or incomplete, would you also tell me?</p> <p>14 A. Yes.</p> <p>15 Q. And is there any reason that you can sit</p> <p>16 of -- think of sitting here today that you're unable</p> <p>17 to testify truthfully and accurately?</p> <p>18 A. No, there is nothing.</p> <p>19 MR. SHIMOTO: I'd like to mark as</p> <p>20 defendant's deposition Exhibit No. 3 defendant's</p> <p>21 notice of deposition pursuant to rule 30(b)(6),</p> <p>22 which I believe that you are designated to testify</p> <p>23 today on.</p> <p>24 (Pause.)</p>

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<p>1 (Exhibit No. 103 marked 2 for identification.)</p> <p>3 Q. Take whatever time you need to read the 4 document, but I'll just ask you: Have you ever seen 5 it before?</p> <p>6 A. Yes, I have seen it.</p> <p>7 Q. And when had you seen it?</p> <p>8 A. Well, I got it by fax two or three weeks, 9 it was -- look, it was a week before or July 20, so 10 approximately because I thought it -- the deposition 11 would be on July 20, and I thought it's a really 12 short term, so it must be five or six, 15 of July, 13 maybe, that's around the date.</p> <p>14 Q. And would you turn to the second page?</p> <p>15 A. Yes.</p> <p>16 Q. You'll see that there are a number of 17 topics there?</p> <p>18 A. Yes.</p> <p>19 Q. And have you reviewed those topics?</p> <p>20 A. Yes, yes.</p> <p>21 Q. And are you designated by Braun to testify 22 regarding those topics today?</p> <p>23 A. Yes.</p> <p>24 Q. And you understand with respect to the</p>	<p>Page 9</p> <p>1 Further, I talked today with 2 Mr. Sievers to answer the special item later on 3 regarding Mrs. Hubatsch and some French translation 4 issues, and I tried to get Mr. Hoeser on the phone 5 to clarify what I couldn't answer, so that what I 6 did for preparation.</p> <p>7 Q. What information did Mr. Hagele provide 8 you generally?</p> <p>9 A. Nothing, he said he could nothing tell me 10 in this regard.</p> <p>11 Q. And what information did Mr. Faulstich --</p> <p>12 A. The same.</p> <p>13 Q. And what information did Mr. Sievers 14 provide you?</p> <p>15 A. He provided me today with -- should I give 16 you -- it's the information what documents were 17 provided to the interpreter translator Mrs. Hubatsch 18 regarding the translation of the Braun patent, he 19 gave me some information this morning.</p> <p>20 Q. Did he provide you any documents?</p> <p>21 A. No, just information by telephone call 22 because it was not possible to reach Mrs. Hubatsch 23 earlier, she was on vacation, and so we -- he got 24 her on the phone yesterday or this morning.</p>
<p>1 list of topics that you are speaking not only on 2 behalf of yourself, but also the knowledge of Braun?</p> <p>3 A. Yes, I am the memory of Braun.</p> <p>4 Q. And what did you do to prepare yourself to 5 testify with respect to the topics listed in Exhibit 6 No. 103?</p> <p>7 A. Yes, yes, I went through such a stack of 8 papers, prosecution history of the two US patents, 9 prosecution history of the German patents, some 10 prior art literature and other papers, notes of the 11 deposition of Mr. Hoeser, notes of the deposition of 12 Mr. Braun, so practically all what is mentioned here 13 I went through that.</p> <p>14 Further, I asked several persons in 15 the company whether they could give me additional 16 assistance or additional information, I talked 17 with -- who was it?</p> <p>18 It was Mr. Hagele, who is now head of 19 the -- or director of the RD department shaver, I 20 talked with Mr. Faulstich, who is the product 21 program manager.</p> <p>22 I talked with Uwe Sievers, who is the 23 patent guy responsible for the current prosecution, 24 and I think that's it.</p>	<p>Page 10</p> <p>1 Q. Is Mrs. Hubatsch a Braun employee?</p> <p>2 A. No, she is a --</p> <p>3 (The witness talks 4 with the interpreter.)</p> <p>5 THE INTERPRETER: She is a free-lance 6 translator.</p> <p>7 Q. Does she reside in Kronberg, to the extent 8 you know?</p> <p>9 A. No, she resides near Darmstadt, Darmstadt, 10 Erzhausen, Erzhausen, that's the village, Erzhausen, 11 E-R-Z hausen.</p> <p>12 THE INTERPRETER: E-R-Z-H-A-U-S-E-N, 13 and Darmstadt, that's D-A-R-N-S-T-A-D-T.</p> <p>14 Q. I actually got that one, I'll learn by the 15 end of this case.</p> <p>16 A. Okay.</p> <p>17 (Laughter.)</p> <p>18 Q. Aside from reviewing the documents we 19 discussed and speaking with Mr. Hagele, 20 Mr. Faulstich, Mr. Sievers and attempting to talk 21 with Mr. Hoeser, did you do anything else to prepare 22 for this deposition?</p> <p>23 A. Yes, yes, well, we -- I came across on 24 Sunday night, and on Monday, we met, we went</p>

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<p>1 with -- it was Dalila and it was Stanley, and we 2 went through the files and we looked at all the 3 questions and went through the prior art for about 4 three to four hours, and that was it. 5 Q. So this was on -- you met with Stanley and 6 Dalila on Monday? 7 A. On Monday, yes. 8 Q. And that was for three to four hours? 9 A. Yes. 10 Q. Did you meet with counsel in preparation 11 for this deposition yesterday? 12 A. No. 13 Q. If you could describe for me in general 14 your post -- do understand what I mean by the term 15 high school in the United States terms? 16 A. Yes, yes. 17 Q. Okay, your post high school education? 18 A. So after high school, I started studying 19 physics at University of Mainz. 20 THE INTERPRETER: M-A-I-N-Z. 21 A. And I made my diploma in about '78, so 22 that was diploma physics, I don't know the English 23 translation, and afterwards, I made my Ph.D or so in 24 physics, nuclear physics, and I finished university</p>	<p>Page 13</p> <p>1 responsibilities within the patent department? 2 A. Well, I was responsible for -- for 3 appli -- filing, or drafting and filing 4 applications on some sensors, on -- what 5 else -- on -- 6 (The witness talks 7 with the interpreter.) 8 THE INTERPRETER: Catali- -- catalyst 9 technology. 10 A. Catalyst -- so -- so -- and there I 11 drafted applications, I got -- so the older person 12 in that patent department gave me some information, 13 train me, so I got -- in this regard, I got some 14 training, but not a degree at Bosch. 15 Q. Let me see if I understand you. In 16 order -- when you're working at Bosch, you would 17 work on writing the applications? 18 A. Yes, writing the applications or 19 prosecuting the applications. 20 Q. Okay. Let me see. In Germany, do you 21 need a legal degree or a degree from a university in 22 order -- in law in order to interact with the German 23 patent office? 24 A. It depends, if you are in your function as</p>
<p>1 in 1982. 2 Q. And following the receipt of your Ph.D, 3 where did you come to be employed? 4 A. With a company Bosch, Bosch, it's 5 automotive supplier in Stuttgart, I started in the 6 patent department. 7 Q. And how did you come to work in the patent 8 department? 9 A. Well, it was -- 10 (The witness talks 11 with the interpreter.) 12 THE INTERPRETER: It was just by 13 accident. 14 A. More important was the company Bosch had 15 some very good reputation in Germany, and so I tried 16 to work in patents and -- 17 Q. Okay, I understand. Do you need to -- in 18 Germany in general, do you need to receive any legal 19 or formal legal education to work in patents? 20 A. Yes. 21 Q. And when you came to work at Bosch, had 22 you received -- 23 A. No, nothing. 24 Q. So what was your -- what were your</p>	<p>Page 14</p> <p>1 an employee of the company, you can represent the 2 company as an employee without any legal degree, but 3 if you are outside counsel, outside lawyer, 4 then -- if you want -- if you are not an employee of 5 the company, then you have to have a degree to 6 represent the company. You understand that? 7 Q. I understand. 8 A. Okay. 9 Q. How long did you work for Bosch? 10 A. Exactly three years, to 1985. 11 Q. And after you left Bosch, when -- where 12 did you go next? 13 A. To the company Braun AG at that time, 14 first of July 1985 I started my job at Braun. 15 Q. And what was your position at Braun at 16 that time? 17 A. I was a patent specialist. 18 Q. And what were your responsibilities as 19 patent specialist? 20 A. At that time, I was responsible for oral 21 care and oral care -- drafting patents applications 22 prosecution for oral care appliances and hair care 23 appliances. 24 Q. And how long were you responsible for oral</p>

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<p style="text-align: right;">Page 17</p> <p>1 care and hair care applications?</p> <p>2 A. For oral care, I was responsible until end 3 of 2002, and hair care, I can't really remember, 4 that's eight, nine, ten years ago, so it was 5 approximately 1995.</p> <p>6 Q. Did your -- did your responsibilities for 7 patents on particular products expand?</p> <p>8 A. Yes, in -- in 1980 -- end of 1987, I went 9 to Munich to take the German patent attorney 10 diploma, and end of 1989, I'm not sure whether 1989 11 or 1990, I took the European patent law degree, so 12 from the legal side, this was -- or from the legal 13 education, this was a step forward.</p> <p>14 And after having got the German patent 15 lawyer degree, I had in addition at that time look 16 for oral care for epilation devices, so these are 17 not shavers, but hair pluckers, we also call them 18 hair pluckers.</p> <p>19 Q. Did there come a time when you became 20 responsible for the prosecution of patents related 21 to shavers?</p> <p>22 A. Never.</p> <p>23 Q. When you were studying to receive your 24 diplomas or degrees in both German patent law and</p>	<p style="text-align: right;">Page 19</p> <p>1 Dietrich Klauer?</p> <p>2 A. Yes, I know him personally.</p> <p>3 Q. Is it correct that Mr. Klauer is now 4 deceased?</p> <p>5 A. Yes, in 2000.</p> <p>6 Q. And when did you first meet Mr. Klauer?</p> <p>7 A. Well, he was already in the patent 8 department when I joined the patent department, so I 9 worked with him together for about 15 years, he was 10 a colleague of me.</p> <p>11 Q. So Mr. Klauer was working at Braun at 12 least in 1985?</p> <p>13 A. Yes, I think he started 1975 or around 14 that, I'm not sure, but he was a long time before me 15 in the patent department employed.</p> <p>16 Q. And what were -- to the extent you recall, 17 what were Mr. Klauer's responsibilities?</p> <p>18 A. He was, at the time I joined the patent 19 department, he was responsible for product range of 20 shavers and epilation devices.</p> <p>21 No, that's not correct because in 22 1985, we did not even have a product epilation 23 device, so he was responsible for shavers.</p> <p>24 Q. And would he have become responsible for</p>
<p style="text-align: right;">Page 18</p> <p>1 European patent law, did you ever receive any 2 training with respect to or was there any discussion 3 of US patent law?</p> <p>4 A. Well, a side aspect, and not during the 5 European exam or preparation for the exam, but to 6 some extent, you hear about US patent law when you 7 prepare for the German patent lawyer, so something 8 about that, and in the meantime, I have 23 years' 9 experience in patent matters, trademark matters and 10 that stuff, and so today, I have a bit more 11 experience also in the US patent law, but I'm not an 12 expert and I'm not US patent attorney.</p> <p>13 Q. So is it fair to say that Braun relies 14 upon outside US counsel to handle --</p> <p>15 A. Yes, that's true because we internal 16 patent lawyers cannot represent the company for US 17 PTO, for instance, or for the Japanese patent 18 office.</p> <p>19 We can represent for the European 20 patent office, German patent office, and so we need 21 outside experts, US patent lawyers, Japanese patent 22 lawyers, Russian patent lawyers, to prosecute the 23 applications in these countries.</p> <p>24 Q. Do you know the name I believe it's Hans</p>	<p style="text-align: right;">Page 20</p> <p>1 epilation devices around the time that Braun 2 purchased Silk-Epil?</p> <p>3 A. Silk-Epil, yes, so at that time, he became 4 also responsible for that because epilation devices 5 and shavers were one product field, or Braun was 6 structured that these both devices were in one 7 product area.</p> <p>8 Q. And to the extent you recall, what was 9 Mr. Klauer's educational background?</p> <p>10 A. He was a mechanical engineer, and that's 11 it, he had no degree as a patent lawyer for the 12 German or European patent office.</p> <p>13 Q. Do you know whether Mr. Klauer had 14 received any patents at Braun?</p> <p>15 A. As an inventor?</p> <p>16 Q. As an inventor, yes.</p> <p>17 A. I think he -- he was involved in some -- a 18 few cases, yes, I think he was, he was an inventor 19 in few shaver -- shaver applications or shaver 20 patents.</p> <p>21 Q. Do you know if he was the inventor in any 22 US patents or --</p> <p>23 A. I can't tell you, no, I have no idea.</p> <p>24 Q. Sure.</p>

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<p>1 A. Maybe the -- the application was also 2 filed in -- in the US, but I would have prepared 3 if -- 4 Q. I understand. 5 A. -- so I can't answer that question. 6 Q. If you could direct your attention to 7 topic No. 3. 8 A. Yes. 9 Q. It states, Therefore, the asserted 10 patents, the identities of all individuals covered 11 by 37 C.F.R., section 1.56 (c), can you tell me who 12 all those individuals would be? 13 A. Yes, so I read this paragraph, and I think 14 these are the invent -- mainly the inventors and the 15 attorneys who prosecuted the cases. Am I right? 16 Q. That would be correct. 17 A. So inventor is Mr. Braun, he is one of the 18 individuals, then Mr. Klauer, who prosecuted that 19 within the company, and for the US case, we had, as 20 usual, Fish & Richardson and Eric Prahl was the 21 attorney there. 22 And when I went through the files, I 23 also -- I saw that also another US attorney was 24 involved, and that was I think Phylis Kristal, I saw</p>	<p style="text-align: right;">Page 21</p> <p>1 signature, and that was my signature at that time. 2 I saw it, but I had nothing to do with the case. 3 The other signature was that of 4 Hans Dieter Klauer, and he prosecuted the case, I 5 just signed to instruct, for instance, to give the 6 Fish & Richardson instructions to prosecute the case 7 that involves money and so on, so we needed two 8 signatures. 9 Q. Okay. So I understand correctly, under 10 German law, in order to give authority to 11 Fish & Richardson to do things, there needed to be 12 two signatures? 13 A. Yes, okay, that's -- one of those was my 14 one, but I was not material involved in that case, I 15 just signed it. 16 Q. So at least with respect to you, you 17 wouldn't have been speaking with Mr. -- with 18 Gebhard Braun, for example, regarding prosecution? 19 A. No, no, I think I didn't know him before, 20 so -- before this case came up. 21 Q. So is it correct that the first time you 22 met Mr. Braun -- 23 A. I don't know whether I met him before, but 24 he is retired since a few years and I had nothing to</p>
<p>1 her signature below some of the papers. 2 Q. Were you involved in the prosecution of 3 the patents in suit? 4 A. No, I was not responsible for shavers 5 regarding patent matters. 6 Q. So did you -- you did not communicate at 7 all with Fish & Richardson regarding the prosecution 8 of the patents in suit? 9 A. I saw under a few of those letters is also 10 my signature, but that depends or that is a problem 11 regarding German -- 12 (The witness talks 13 with the interpreter.) 14 THE INTERPRETER: Commercial law in 15 Germany. 16 A. Because you need, according to that law 17 and our internal structure is to have two signatures 18 below, and one is -- 19 (The witness talks 20 with the interpreter.) 21 THE INTERPRETER: It's a procuration, 22 which means that you give somebody the power of 23 attorney to act in your name. 24 A. So -- and one should be this PPA</p>	<p style="text-align: right;">Page 22</p> <p>1 do with the shaver department and we are about 2000 2 people at the Kronberg facility or location, so you 3 do not know each and every person, so I -- 4 Q. Sure. 5 A. -- maybe I've seen him, but I didn't know 6 his name up to that time, and I couldn't connect the 7 face with the name. 8 Q. Had you read -- well, in the 1994-1995 9 time frame, had you read the patent applications 10 for -- 11 A. No, no. 12 Q. I'd like to mark as defendant's deposition 13 Exhibit No. 104 the privilege log produced by Braun 14 in this litigation. I'm just going to ask you about 15 a few names on this document. 16 (Exhibit No. 104 marked 17 for identification.) 18 Q. If you could turn to page 3, if you see 19 there, there is the name of P. Sartorius? 20 A. Yes. 21 Q. Can you tell me who Mr. Sartorius is? 22 A. Yes, I know him personally, he -- it's 23 Peter Sartorius, he lives near southern of us, near 24 Heidelberg Mannheim area, and he is a patent</p>

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<p style="text-align: right;">Page 25</p> <p>1 attorney, a German patent attorney and European 2 patent attorney. 3 He runs a private practice, or at that 4 time, he started to run a private practice. 5 Formerly, he worked for German company 6 John Deere, not -- it's US company, but German 7 branch, I think it was John Deere, and he at that 8 time Dieter Klauer instructed him to draft some 9 patent applications. 10 Also these was applications on the 11 basis of some venture disclosures or information, so 12 he is an outside patent attorney. 13 Q. Does Braun still have a relationship with 14 Mr. Sartorius? 15 A. Not at the moment. We -- at that time, it 16 was the philosophy of Braun or the -- regarding the 17 work in the patent department to do most of the work 18 in-house, and we needed only Peter Sartorius or 19 others to -- to -- 20 (The witness talks 21 with the interpreter.) 22 THE INTERPRETER: To help us deal with 23 the last details. 24 A. No, we have not always continuous work,</p>	<p style="text-align: right;">Page 27</p> <p>1 written description, to give some prior art, if 2 there is any, or if we are aware of any. 3 And sometimes if you have three or 4 four or five cases, it's better to -- to -- that the 5 attorney comes to the company with us and you have 6 a talk together. 7 And maybe then also the inventor will 8 be involved, but it was not -- I don't know it, but 9 it was not usual to have the outside attorney put 10 together with the inventor, only in cases there are 11 misunderstandings or something like that or someone 12 needs more information. 13 Q. Well, do you know with respect to the 14 prosecution of the patents which are at issue here 15 if Mr. Sartorius came to Braun and met with the -- 16 A. To Mr. Braun or Braun the company Braun? 17 Q. Well, if Mr. Sartorius came to the company 18 Braun and then met with Mr. Gebhard Braun? 19 A. I don't know it, but can I say what I 20 guess? 21 MS. WENDLANDT: No. 22 A. Good. 23 Q. Well, I just want to be -- I want to be 24 clear.</p>
<p style="text-align: right;">Page 26</p> <p>1 some -- 2 (The witness speaks 3 with the interpreter.) 4 THE INTERPRETER: Oh, if they have too 5 much, to deal with the overload of work. 6 A. So this was at that time, I guess, we took 7 Peter Sartorius because Mr. Klauer had a lot to do 8 in other areas, but I don't know for certain why 9 we -- why we used him for this -- for these two 10 cases especially. 11 Q. So did Mr. Sartorius draft the German 12 counterparts to the US patent applications? 13 A. Yes, yes. 14 Q. Do you know how he was able 15 to -- what -- let me start again. 16 Did Mr. Sartorius meet with Mr. Braun 17 in order to prepare the patent applications? 18 MS. WENDLANDT: Objection, go ahead 19 and answer. 20 A. I can't tell that, but I believe 21 Mr. Sartorius will have spoken with Mr. Klauer and 22 will have got the information, the invention 23 disclosure and maybe some prior art or whatever, 24 that's the usual way we handle it, to give the</p>	<p style="text-align: right;">Page 28</p> <p>1 A. So I don't know whether Peter Sartorius 2 met Mr. Braun or not. 3 Q. And when I'm -- maybe I should clarify. 4 When I'm asking you that question, I'm also asking 5 with respect to Braun's knowledge, does Braun know 6 whether Mr. Sartorius met with Mr. Gebhard Braun? 7 A. I don't think so because the only person 8 who could definitely say that is Mr. Klauer, if he 9 would not -- would not have died, and I looked at 10 the files and who could also testify that would be 11 Mr. Gebhard Braun, and I think he was deposition, so 12 I can't -- 13 Q. Did Braun -- Braun -- pardon me. 14 Did Braun attempt to collect documents 15 from Mr. Sartorius related to his work on the 16 patents in suit? 17 A. Mr. Gebhard Braun? 18 Q. No, did the company Braun contact 19 Mr. Sartorius regarding his work on the patents in 20 suit? 21 MS. WENDLANDT: Objection, you can go 22 ahead and answer if you know. 23 A. Well, maybe I -- so when Mr. Sartorius has 24 drafted the applications on the basis of whatever</p>
<p style="text-align: right;">Page 25</p> <p>1 attorney, a German patent attorney and European 2 patent attorney. 3 He runs a private practice, or at that 4 time, he started to run a private practice. 5 Formerly, he worked for German company 6 John Deere, not -- it's US company, but German 7 branch, I think it was John Deere, and he at that 8 time Dieter Klauer instructed him to draft some 9 patent applications. 10 Also these was applications on the 11 basis of some venture disclosures or information, so 12 he is an outside patent attorney. 13 Q. Does Braun still have a relationship with 14 Mr. Sartorius? 15 A. Not at the moment. We -- at that time, it 16 was the philosophy of Braun or the -- regarding the 17 work in the patent department to do most of the work 18 in-house, and we needed only Peter Sartorius or 19 others to -- to -- 20 (The witness talks 21 with the interpreter.) 22 THE INTERPRETER: To help us deal with 23 the last details. 24 A. No, we have not always continuous work,</p>	<p style="text-align: right;">Page 27</p> <p>1 written description, to give some prior art, if 2 there is any, or if we are aware of any. 3 And sometimes if you have three or 4 four or five cases, it's better to -- to -- that the 5 attorney comes to the company with us and you have 6 a talk together. 7 And maybe then also the inventor will 8 be involved, but it was not -- I don't know it, but 9 it was not usual to have the outside attorney put 10 together with the inventor, only in cases there are 11 misunderstandings or something like that or someone 12 needs more information. 13 Q. Well, do you know with respect to the 14 prosecution of the patents which are at issue here 15 if Mr. Sartorius came to Braun and met with the -- 16 A. To Mr. Braun or Braun the company Braun? 17 Q. Well, if Mr. Sartorius came to the company 18 Braun and then met with Mr. Gebhard Braun? 19 A. I don't know it, but can I say what I 20 guess? 21 MS. WENDLANDT: No. 22 A. Good. 23 Q. Well, I just want to be -- I want to be 24 clear.</p>
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<p style="text-align: right;">Page 29</p> <p>1 information, then he will have sent these drafts to 2 Mr. Klauer, Mr. Klauer reviewed it and maybe there 3 were some misformulated claims or some additional 4 disclosure, and there was communication between 5 Mr. Klauer and Mr. Sartorius, and then maybe 6 the -- the draft was revised and then it was filed 7 with the German patent office, that's how these 8 things work usually.</p> <p>9 Q. I want to be clear. What I'm asking is 10 now in the 2003-2005 time period during this 11 litigation --</p> <p>12 A. Yes.</p> <p>13 Q. -- did the company Braun make any effort 14 to contact Mr. Sartorius?</p> <p>15 A. No, no, no.</p> <p>16 Q. So I take it you did not speak with 17 Mr. Sartorius in preparation for this deposition?</p> <p>18 A. No, but I spoke with him when we met at a 19 seminar, but not about this case.</p> <p>20 Q. Sure.</p> <p>21 A. The patent community is not so big, we are 22 1,500 German patent lawyers and to meet each other, 23 to -- some events, and then I saw also the last two 24 years Peter Sartorius.</p>	<p style="text-align: right;">Page 31</p> <p>1 of the files, to put the file numbers and all that 2 stuff in our computer system, so she reported I 3 think to the head of the patent department at that 4 time was Dieter Klauer.</p> <p>5 Q. If you could look at the next to last 6 entry, there's listed a C. Hirsch.</p> <p>7 A. Yes, that's also a secretary, fortunately, 8 she has not died, she still lives and she still is 9 in the patent department as an assistant.</p> <p>10 Q. Okay. Please turn the page.</p> <p>11 A. Yes.</p> <p>12 Q. Page 4, look at the third entry, for 13 example, it's listed yourself and Mr. Klauer.</p> <p>14 A. Yes.</p> <p>15 Q. Do you believe this is the type of 16 situation where you would have --</p> <p>17 A. Yes, I think so.</p> <p>18 Q. Okay, as we discussed previously. There's 19 listed also at approximately the sixth entry an 20 I. Heldmann.</p> <p>21 A. Yes, she was a --</p> <p>22 (The witness talks 23 with the interpreter.)</p> <p>24 THE INTERPRETER: She was a temporary</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. If Braun asked Mr. Sartorius, do you 2 believe that he would provide the files that he 3 retained, to the extent there are any?</p> <p>4 A. I think so, yes. Why not?</p> <p>5 Q. If you could look at the bottom of 6 page 3 --</p> <p>7 A. Yes.</p> <p>8 Q. -- the last -- second to last entry, 9 there's listed an A. Dietrich?</p> <p>10 A. A. Dietrich, that's -- oh, that's a woman 11 which worked in the patent department, and she 12 unfortunately died also four or five years ago.</p> <p>13 She had an accident, car accident, 14 so -- and she made the docketing of our files, 15 she -- she run the computer system to docket the 16 files and that stuff, so she had nothing to do with 17 the actual patent work, only --</p> <p>18 Q. She was -- was she a secretary of some 19 type?</p> <p>20 A. Yes, assistant, yes.</p> <p>21 Q. Do you know whose assistant she was or was 22 she just an assistant for the entire department?</p> <p>23 A. No, she had -- she had the function to 24 look over the terms and to -- to make the docketing</p>	<p style="text-align: right;">Page 32</p> <p>1 assistant.</p> <p>2 A. And she worked for some time in the patent 3 department, and -- but it was for one or two years, 4 I think so, and then she went to -- I don't know 5 where she went.</p> <p>6 Q. Okay. The next entry, there's listed a 7 G. Haunold.</p> <p>8 A. Yes, Haunold, he's located in Austria and 9 he is a translator especially for Japanese into 10 German and French or English language, I don't know.</p> <p>11 Q. Did Mr. Haunold provide any translation 12 services in connection with the patents in suit?</p> <p>13 A. Maybe, I can't tell you, but usually 14 we -- we used at that time and use today Mr. Haunold 15 when we need translations from the Japanese into 16 English or German language, so -- and we had here 17 also a Japanese parallel of prosecution running.</p> <p>18 It's likely that there has been some 19 Japanese literature cited as prior art and where 20 there's no foreign counterpart which is readable for 21 us, then we have that language translated, so it's 22 nothing unusual.</p> <p>23 Q. Okay. If you can turn to the next page, 24 in the second entry, well, first, there's listed</p>

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<p>1 there in the second entry E. Cordes. 2 A. Yes, that's my secretary. 3 Q. Also in the -- farther over, there's 4 listed a notification of invention. Do you see 5 that? And it's the same entry. 6 A. Yes, yes. 7 Q. What is a notification of invention, is 8 that -- 9 A. It's an IDS, invention disclosure. 10 According to German inventors law, you have to 11 disclose, if you believe you have made an invention, 12 you have to disclose that to your employer, and 13 you -- and there are several rules what you have to 14 describe the invention, you have describe prior art 15 and all that stuff, and that is called a 16 notification of invention or invention disclosure. 17 Q. And that's required by German law? Well, 18 let me -- excuse me. German law requires the filing 19 of a notification of invention? 20 A. Yes. 21 Q. And to the extent you know, why does 22 German law require the filing of a notification of 23 invention? 24 A. This inventors law comes out of the time</p>	<p>Page 33</p> <p>1 the employer? 2 MS. WENDLANDT: Objection. 3 A. The -- to make it simple, the structure of 4 the German inventors law is as follows: If an 5 invention has been disclosed to the company, then 6 the company is, from that point of time, four 7 months, to lead over the rights on the invention 8 from the inventor to the company. 9 If the company misses to lead over the 10 rights within this four months' term, the rights 11 stay with the inventor, so this four months' term is 12 a very, very strict term, you cannot -- 13 (The witness talks 14 with the interpreter.) 15 THE INTERPRETER: Extend. 16 A. You cannot extend it, nothing, and in case 17 the company leads over the rights from the inventor 18 to the -- on the invention from the inventor to the 19 company, then the inventor will get a right for 20 compensation. 21 So he gives away the right on the 22 invention, which he originally has as an 23 employer -- employee person, but he gets a claim 24 against the company to get some compensation.</p>
<p>Page 34</p> <p>1 of 1930, 1940 in the war times, and I have no idea 2 why they put this phrase in it. 3 Q. Well, do you know what the purpose of the 4 legal requirement of the notification of invention 5 is under German law? 6 MS. WENDLANDT: Objection. 7 A. No. 8 Q. Well, at Braun, why do employees file a 9 notification of invention? 10 A. Besides the law, they have a -- usually a 11 preamble in their contract that if they think 12 they've made an invention, they've disclosed this 13 invention to the employer, that's in the -- in their 14 contract because the company does not want that 15 inventions are -- or that inventions cannot be filed 16 since -- an employee believes he must not tell this 17 fact to the company. 18 Q. So is the contractual requirement so that 19 the employee doesn't try to take the invention for 20 himself? 21 A. Yes. 22 Q. Is the purpose of the German law, to the 23 extent you know, also to ensure that the employee 24 does not take the invention for himself away from</p>	<p>Page 36</p> <p>1 Q. Okay. 2 A. So that's -- and maybe that's a reason why 3 it is said you have to -- to -- in the law, it 4 is -- there's pre -- there is what clause that you 5 have to disclose -- 6 (The witness talks 7 with the interpreter.) 8 THE INTERPRETER: To expedite. 9 A. Immediately the invention to the company, 10 that's maybe an explanation. 11 Q. How does, in Germany or at Braun, how does 12 the -- an employee typically give his rights and 13 invention to his employer? 14 A. Oh, he doesn't give -- he has no chance. 15 If the employer wants to have the right, he just 16 says, Well, I take the right from you, he has no 17 chance to say no, okay, so it's -- 18 (The witness talks 19 with the interpreter.) 20 THE INTERPRETER: It is a one-sided 21 type of -- a type of transaction. There is no 22 two-way structure possible. 23 A. It's not -- it's not an agreement where 24 two parties agree that one party will get the right</p>

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<p>1 on the invention.</p> <p>2 The law says the company has just to 3 say we want to have the right, and the inventor can 4 say yes or no or whatever, the right transfers from 5 the inventor over to the company, so he has 6 no -- the inventor does not have to agree.</p> <p>7 Q. So just let me make sure I'm 8 reciting -- so within four months of a filing a 9 notification of invention, if an employer wants the 10 rights within four months, they need to file an 11 application with the German patent office?</p> <p>12 A. No, from the date when the company 13 receives the invention disclosure -- 14 (The witness talks 15 with the interpreter.)</p> <p>16 THE INTERPRETER: The date of entry, 17 the date of issue.</p> <p>18 A. No, the date when the --</p> <p>19 THE INTERPRETER: Entry.</p> <p>20 A. IDS, the written IDS, written and signed 21 IDS receives the company, normally the patent 22 department, from this point of time four months, the 23 company has four months' time to declare that the 24 rights have to be transferred from the inventor to</p>	<p>Page 37</p> <p>1 So if the invention -- if you have a 2 patent on the invention and the invention is not 3 used, the compensation is about a thousand euros at 4 the moment, \$1,200 for all inventors, and if the 5 invention is used, there is some kind of royalty 6 like model, and that could be less or more, it 7 depends how much products are sold or what are the 8 costs of the invention involved and all that stuff, 9 so it's -- it's -- you can read books like this high 10 (indicating) how to competence inventors, so you are 11 lucky that you have not this clause, you have only 12 the inventors dollar, I think.</p> <p>13 Q. It used to be that way.</p> <p>14 A. Yes.</p> <p>15 Q. Has -- I guess with respect to the patents 16 in suit, has Braun the company compensated 17 Gebhard Braun?</p> <p>18 A. Yes, but not filing because it's ongoing I 19 think every one or two years, it's again calculated 20 what came in addition because the inventions are 21 used here in this special regard, and so he has got 22 compensation.</p> <p>23 Q. Do you know how much he's been 24 compensated?</p>
<p>1 the company.</p> <p>2 Q. I see. And --</p> <p>3 A. So if you have a stamp on the IDS, and we 4 have here one IDS in the files, and from that stamp, 5 four months in the future, that's the term the 6 company has.</p> <p>7 Q. How does Braun then declare to an employee 8 that they have chosen to take the rights?</p> <p>9 A. Well, we send them a letter and say well, 10 we lead over the rights to the company.</p> <p>11 Q. And once that occurs, you mentioned that 12 there is compensation to the employee; is that 13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. How does Braun compensate inventors?</p> <p>16 A. It depends whether the -- firstly, you 17 have to file an application, the IDS is not 18 sufficient, so you can only be compensated for a 19 monopoly right, if you have no monopoly right, the 20 inventor will not get compensation.</p> <p>21 So there should be at least an 22 application, there should be better, even better, a 23 patent, a grounded patent, and then it depends 24 whether the invention is used or not used.</p>	<p>Page 38</p> <p>1 A. Maybe 20, 30, 20 to 30, maybe 40,000 2 euros, I don't know, but I'm not sure, but I think 3 it's in this area.</p> <p>4 Q. Do you know if you had to find out, how 5 would you find out how much Mr. Braun --</p> <p>6 A. I would ask one of my assistants.</p> <p>7 Q. Do you know if records are kept with 8 respect to disbursements to him?</p> <p>9 A. Yes.</p> <p>10 Q. And what do those records look like?</p> <p>11 A. The records regarding inventors 12 compensation?</p> <p>13 Q. Well, more particularly, the records 14 regarding -- well, in general, but what would the 15 records regarding compensation to Mr. Braun look 16 like?</p> <p>17 MS. WENDLANDT: Objection.</p> <p>18 A. So each -- each person at the Braun who 19 made inventions has a file, and there are some 20 persons who have 20, 30, 40 patent applications or 21 patents, others have only one or two, and so it 22 depends whether the patents or patent applications 23 are used or not used, so one's on the one hand you 24 have a standard compensation.</p>

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<p style="text-align: right;">Page 41</p> <p>1 The other is a use dependent 2 compensation, and really these files look like we 3 got the numbers from other departments, how many 4 products were sold, what are the costs of that 5 switch with subject to the invention or whatever, 6 then you have some four years and you have to just 7 to calculate it, and at the end, you have a letter 8 which says well, at the time from that to that, you 9 receive compensation for X euros or whatever, and 10 that's it, so -- so -- so it's --</p> <p>11 Q. Okay. So -- so essentially you'd send a 12 letter to Mr. Braun and presumably a check along 13 with that?</p> <p>14 A. No, it's -- it's done not by check, 15 we -- there are tax issues in addition, this 16 something is also taxable and Mr. Braun is -- 17 (The witness talks 18 with the interpreter.)</p> <p>19 THE INTERPRETER: He is retired.</p> <p>20 A. He is retired, so it's not so easy, but I 21 think that he will get it on his account, we 22 just -- 23 (The witness talks 24 with the interpreter.)</p>	<p style="text-align: right;">Page 43</p> <p>1 compensating Dr. Pahl with respect to -- 2 A. Well, we are thinking about that. 3 MS. WENDLANDT: Objection, go ahead. 4 A. Sorry, we are thinking about that, and he 5 has been cited in the US case as an inventor, and 6 we -- and I think we have to do something in this 7 regard, but we haven't compensated him up to now. 8 So he has not received any money with 9 respect to these two inventors compensation with 10 respect to these two cases. 11 Q. Has Braun discussed with Mr. Braun, 12 Mr. Gebhard Braun returning some of the money that 13 he has been paid with respect to -- 14 A. That's not discussable because the German 15 inventors law says once you have paid inventors 16 compensation, that's not returnable. 17 Q. So even if there is incorrect 18 inventorship, money cannot be returned? 19 A. No. 20 Q. And how long does the -- how long does the 21 right to compensation last in the case of Mr. Braun? 22 A. As long -- 23 MS. WENDLANDT: Objection. 24 A. As long as the monopoly will be there, so</p>
<p style="text-align: right;">Page 42</p> <p>1 THE INTERPRETER: Transferred. 2 A. Transferred on his account. He will not 3 get a check, that's unusual. 4 Q. And does the -- how often -- how often 5 are -- would these letters be sent? 6 A. Well, they should be sent regularly, and 7 I'm now -- since three years head of the patent 8 department, and I'm now at the process we do that 9 regularly every two years, but we are not still at 10 the end. 11 Inventors compensation is time 12 consuming, and if the attorneys have to move or 13 shift some work, this can be shifted relatively 14 easily. 15 The rest you have other terms which 16 cannot be extended or whatever, so inventors 17 compensation is an issue which I want to have -- be 18 in contact with a bit more regularly, and we are 19 just in the process, and I think it would be 20 appropriate every two years. 21 Q. Has Braun compensated Dr. Pahl at all with 22 respect to the patents in suit? 23 A. No, no. 24 Q. Does Braun have any intention of</p>	<p style="text-align: right;">Page 44</p> <p>1 until the end of the patent lifetime, if we have the 2 patents up to the end of lifetime. 3 MR. SHIMOTO: I would like to request 4 the copies of the letters sent to Mr. Braun 5 regarding compensation, production of those 6 documents. 7 MS. WENDLANDT: Sure, I think that 8 they have been produced, if they haven't we'll get 9 them to you if they are not privileged. 10 MR. SHIMOTO: If I'm not -- if I'm 11 mistaken, then we would request them. 12 Q. Look at the bottom of page 5 where there's 13 an entry there for R. Bader, I believe, to 14 M. Fullgrabe? 15 A. I'm not sure. We have a Mr. Bader in the 16 shaver department, but I don't know whether -- I 17 think that person writes with two A, I'm not 18 certain, and Fullgrabe, no, maybe I've heard these 19 names, but I have no idea to -- to what person I 20 should connect the names. 21 Q. You see the entry there is at June 12 of 22 2003? 23 A. Mm-hmm. 24 Q. Did Braun anticipate litigation with</p>

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<p>1 Remington in June of 2003 with respect to the 2 patents in suit?</p> <p>3 MS. WENDLANDT: Objection.</p> <p>4 A. I can't -- we anticipated litigation when 5 Remington launched their product, and I've 6 not -- I'm not aware of the exact date when that 7 was.</p> <p>8 Q. Okay. So it's your recollection that 9 Braun began to think of litigation with Remington 10 when Remington launched its product commercially?</p> <p>11 MS. WENDLANDT: Objection.</p> <p>12 A. Yes, before we didn't know. Before we 13 didn't know that that would be a case of 14 infringement or of potential infringement.</p> <p>15 Q. Turn to page 7.</p> <p>16 A. Mm-hmm.</p> <p>17 Q. On the third to last entry, there's listed 18 a T. Wieske.</p> <p>19 A. Yes, Wieske, he is a patent attorney who 20 worked for Braun about two to three years, and he 21 was at that time responsible for shaver electronics, 22 so only the -- not the mechanical of the electronic 23 part, and -- but he was only two -- two, two and a 24 half years with the company, and then he went to</p>	<p>Page 45</p> <p>1 nothing, but there has been or there must have been 2 some prior art search because in the original patent 3 application, a US document was cited as prior art 4 and I have no idea how Dieter Klauer, and he must 5 have found it, I guess, maybe he conducted a search 6 or -- but we have no -- no -- no indication 7 that -- so we have no files and I can't tell that.</p> <p>8 Q. So -- and I can mark that patent, if it 9 would be helpful to you. (Pause.)</p> <p>10 MR. SHIMOTO: Let's mark it as 11 defendant's deposition Exhibit No. 105, US patent 12 No. 3,172,416.</p> <p>13 A. Yes.</p> <p>14 Q. There you go. (Exhibit No. 105 marked for identification.)</p> <p>15 Q. This is a patent which is discussed in the 16 specification of the patents in suit.</p> <p>17 A. Yes.</p> <p>18 Q. Does Braun know -- does Braun, the 19 company, know how this patent was located?</p> <p>20 A. No, I just try to tell you we looked in 21 our files, we did not find any documents regarding</p>
<p>1 private practice.</p> <p>2 Q. So was Mr. Wieske, was he involved with 3 the prosecution of either of the patents in suit?</p> <p>4 A. No, I don't think, because as I said, he 5 was a specialist for electronics, and these patents 6 here are more mechanical stuff.</p> <p>7 Q. Okay.</p> <p>8 A. Can I return this, or --</p> <p>9 MS. WENDLANDT: We can start a pile 10 here (indicating).</p> <p>11 MR. SHIMOTO: Just set it off to the 12 side, we won't use that again.</p> <p>13 Q. If you'd look again at the deposition 14 notice, topics 6, 7 and 8, roughly.</p> <p>15 A. Yes.</p> <p>16 Q. The first topic is any patentability, 17 validity or prior art search, study or analysis 18 relating to the alleged inventions claimed or 19 disclosed in the asserted patents.</p> <p>20 At the time in around 1993 to 1995, 21 did Braun conduct any prior art search related to 22 the patents in the suit?</p> <p>23 A. I talked about this issue performed with Uwe Sievers, and he checked our files and there's</p>	<p>Page 46</p> <p>1 prior art searches, and we have no idea how 2 Dieter Klauer, and he must have found the document 3 because it was his job, and no idea.</p> <p>4 Q. Do you know if Fish & Richardson conducted 5 any prior art searches on behalf of Braun related to 6 the patents in suit?</p> <p>7 A. No, I don't think so because that must 8 have been in the prosecution files, we would have 9 instructed them, and normally, we do not instruct 10 our attorneys to conduct additional searches because 11 we have searches before the German patent office, 12 European patent office, Japanese and US patent 13 office and so why spend additional money when 14 there's no need.</p> <p>15 Q. Do you know if Braun located any prior art 16 in searching -- well, do you know if Braun located 17 any prior art related to the patents in suit which 18 was not disclosed to the United States Patent and 19 Trademark Office?</p> <p>20 A. Well, do you mean -- what do you mean in the prior -- with the word prior art, prior art is all -- all what is known before the filing date or the date of invention.</p> <p>21 Do you mean relevant pertinent prior</p>

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<p>1 art, or -- because all is prior art, so -- 2 Q. Yes, I guess I mean pertinent prior art. 3 A. Yes, no, what was your question again 4 regarding pertinent prior art? 5 Q. Do you know if -- well, let me put it this 6 way: Braun does not know today what searches 7 Mr. Klauer would have performed related to what 8 patent -- what prior art searches Mr. Klauer would 9 have performed related to the patents in suit? 10 A. Well, we could not identify any documents 11 which revealed that he conducted prior art searches, 12 but he cited at the beginning this document, so he 13 must have got it, anyway, and we don't 14 know -- Braun, the company Braun does not know how 15 he came to this document. 16 Q. And so the company Braun also does not 17 know whether Mr. Klauer found any additional pieces 18 of prior art which he did not disclose; is that 19 correct? 20 MS. WENDLANDT: Objection. 21 A. I think if it's -- if Dieter Klauer would 22 have thought it is -- it is pertinent prior art, he 23 would have revealed it because that is -- that is a 24 philosophy of Braun for the last at least 20 years</p>	<p>Page 49</p> <p>1 how Gebhard Braun would have received defendant's 2 deposition Exhibit No. 105 during -- at the time 3 that he was working on his -- that he filed his 4 notice of invention? 5 A. He would have received this document, if 6 he has received it, and I think he has received it, 7 from Dieter Klauer. 8 Q. Am I correct, then, that Dieter Klauer was 9 solely -- well, within Braun, the company, was 10 Dieter Klauer solely responsible for the preparation 11 and handling of the patents in suit? 12 A. Yes. 13 Q. Taking a step back to the German 14 inventorship law that we were discussing, is it 15 typical that people in the patent department ask an 16 inventor whether anyone else assisted him with 17 respect to a particular invention? 18 MS. WENDLANDT: Objection. 19 A. Well, it's not typical that the person in 20 the patent department responsible for this area asks 21 an inventor, but I know we have a written statement 22 on the invention disclosure that -- that the 23 inventor himself testifies that there are no 24 additional inventors involved.</p>
<p>1 when I'm with the company, we want to have valid 2 patents and if he would find a pertinent prior art, 3 we would not hide it, we would disclose it. 4 Q. So -- well, are you -- well, when you came 5 to work at Braun, were you aware of the duty of 6 disclosure in United States? 7 A. Yes. 8 Q. Do you know if Mr. Klauer was aware of the 9 duty of disclosure in the United States? 10 A. Well, I think so, I think so, and he -- he 11 made a lot of US cases, and usually, our US 12 attorneys, Fish & Richardson, ask us at some point 13 of time is there additional prior art out of foreign 14 prosecutions or searches something, so I think he 15 knew about that, yes. 16 Q. And am I correct that the duty of 17 disclosure is different in the United States such 18 that there is no corresponding duty Europe; correct? 19 MS. WENDLANDT: Objection. 20 A. Yes, so Germany and Europe, but the 21 failing of disclosing pertinent prior art does -- 22 must not lead to deficiency with the patent, that's 23 the -- the consequence is different. 24 Q. Do you know how -- well, does Braun know</p>	<p>Page 50</p> <p>1 Q. And what is the purpose of that statement? 2 A. Maybe to check or to guarantee that 3 inventors compensation is paid to the right persons. 4 Q. And is it Braun's expectation that its 5 employees will be honest when filling out notices of 6 invention? 7 A. The expectation or the experience? 8 Q. Well, let's start out with the expectation 9 first. 10 A. Yes, I think so. 11 Q. And what is the experience? 12 A. The experience confirms the expectations, 13 there are only really few cases in the last -- there 14 have been only a few cases in the last 20 years 15 where there were some problems. 16 Q. And do you recall the few cases where 17 there would have been a problem? 18 Well, I mean, there -- I guess one 19 would be this case; is that correct? 20 A. No, this was not a problem to that point 21 of time when we had to look closer to all the 22 history and what happened because of this trial 23 here, otherwise, nobody would have seen your 24 problem, and for Braun, for the company Braun, he</p>

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<p>1 has not a problem. 2 Problems arise when one group files an 3 invention disclosure and maybe another group which 4 they worked partly together says well, we also 5 invent this, so that's a problem, this is not a 6 problem in this regard. 7 Q. Okay. So problems arise when some other 8 group basically holds out their hand and says we 9 want money? 10 A. Yes, or another inventor, not only group 11 but single person. 12 Q. Okay. 13 A. But it's very -- it's seldom, so I had 14 that two or three times, it's -- it's -- it works 15 well. 16 Q. All right. So both the expectation and 17 the experience of Braun is its employees will be 18 honest when filling out notices of inventions? 19 A. Yes. 20 Q. If you could look at topic No. 9, it 21 states, The earliest date upon which Braun became 22 aware of the number of US patents, do you see that? 23 A. Yes. 24 MR. SHIMOTO: Let's mark as deposition</p>	<p>Page 53</p> <p>1 earliest date that Braun became aware of US patent 2 No. 1,868,904? 3 A. No, I can't tell you. 4 Q. What would you need to do to be able to 5 tell me when Braun became aware of I'll start first 6 US patent No. 1,868,904? 7 A. Maybe I would have looked into the files 8 of this US patent or the parallel files to evaluate 9 where this document was cited. 10 Was it cited by the examiner, by the 11 German examiner, European examiner, US examiner, 12 then maybe I could tell you what the 13 earliest -- what the latest date, and the earliest 14 date I can't tell you, that I don't know, that is 15 very old reference from 1932, maybe Braun knew it in 16 1934, I can't tell you. 17 Q. Well, with respect to topic No. 9, what 18 did you do to gain knowledge as to the earliest date 19 upon which Braun would become aware of the listed 20 patents? 21 A. I went through or we went through these 22 documents, and as far as I recall, this -- let me do 23 it like that -- this document here (indicating) 24 that's the document cited in the original</p>
<p>1 Exhibit No. 106 US patent No. 6,698,437, which is to 2 list Mr. Hoeser a number of other individuals as 3 inventors. 4 MS. WENDLANDT: Jim, just to clarify, 5 this is not one of the ones listed on topic 9. 6 MR. SHIMOTO: No, no, no, I just have 7 questions about it. 8 MS. WENDLANDT: Okay. 9 (Exhibit No. 106 marked 10 for identification.) 11 Q. Have you ever seen this document before? 12 MS. WENDLANDT: Objection. 13 A. I can't tell whether I've seen it 14 because -- yes, okay, I can't tell you. 15 Q. You have or have not seen it? 16 A. I don't know. 17 Q. Oh, okay. If you look under the 18 references cited -- 19 A. Yes. 20 Q. -- we can start with the first, there's 21 listed one US patent No. 1,868,904 to Johnston, and 22 that's one of the patents listed in topic No. 9? 23 A. Yes. 24 Q. Can you tell me, then, what was the</p>	<p>Page 54</p> <p>1 application. 2 The 146 patent, that must be known 3 somewhere around 1993, 1992 to Braun, and then we 4 have here three documents, I think the 988486 and 5 394, these were documents cited in the prosecution, 6 and as far as I recall, the other documents have 7 been cited during litigation, and that's -- and 8 it's -- the question, the earliest date, the 9 earliest date could be the date of publication of 10 these documents, but I have no idea how I or how I 11 speaking for Braun could have checked that. 12 Q. Well, I guess one thing I would request, 13 and maybe we -- well, we can't do it today, maybe we 14 can follow up on this, if you could check into the 15 prosecution of this particular patent and the files 16 related to the prosecution of Mr. Hoeser's patents, 17 perhaps then you would be able to ascertain at least 18 a somewhat earlier day as to when Braun would have 19 been aware as to some of the patents listed in this 20 topic, but that said, sitting here today, aside from 21 the patents where you can find dates, the rest of 22 them, the answer is Braun doesn't know precisely the 23 earliest date -- 24 A. Yes, yes.</p>

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<p>1 Q. -- when they knew of them. 2 MS. WENDLANDT: And even with regard 3 to the files of exhibit -- what is this, 106? 4 MR. SHIMOTO: Mm-hmm. 5 MS. WENDLANDT: That wouldn't answer 6 the question of the earliest date, it would just 7 give you, as I think Mr. Vorbeck has testified, the 8 latest date upon which we knew. 9 MR. SHIMOTO: Well, yes, I think a 10 reasonable search is all you can ask. 11 A. So what -- could you repeat exactly what 12 you want me or us to do with regard to the 13 prosecution history of this file of the 437 patent? 14 Q. Well, for -- for these particular 15 patents -- 16 A. These listed here? 17 Q. Yes, well, listed in topic 9, not all of 18 them, but the ones that are listed in topic 9 -- 19 A. Okay, mm-hmm. 20 Q. -- look if there are files related to the 21 prosecution of Mr. Hoeser's patents, I would suggest 22 that might be a place where you would be able to 23 determine dates when Braun would have been -- had 24 gained knowledge as to those patents.</p>	<p>Page 57</p> <p>1 prosecution of the asserted patents. Do you see 2 that? 3 A. Yes. 4 Q. For the individuals covered by 37 5 USC -- no, 37 C.F.R. section 1.56 (c) during the 6 relevant time period, who was aware of 7 Mr. Zeischke's thesis? 8 A. I can -- if you look at the last page, 9 there is -- Mr. Klauer mentioned in the A -- it's 10 page 5277, B005277, last page on this document, and 11 the -- on the third last line, Herr Klauer, Braun 12 AG, that is Mr. Klauer, and so I -- this is -- 13 (The witness speaks in German.) 14 A. That means with whom or what information 15 got Mr. Zeischke from whom and he got here 16 information from Mr. Klauer, so I believe since 17 Mr. Klauer is cited here, that Mr. Klauer was aware 18 of this document. 19 (The interpreter speaks in German.) 20 THE INTERPRETER: That is a source 21 reference. 22 MR. SHIMOTO: Yes, oh, I gotcha. 23 Q. Did Braun ever attempt to pursue patent 24 protection on Mr. Zieschke's work?</p>
<p>1 A. Okay, so the number -- the documents 2 listed in question 9, which are also here on this 3 (indicating) -- 4 Q. That is correct. 5 A. Okay. 6 Q. If you'd like a break now -- 7 A. No, I just want to make a note. 8 Q. Okay. 9 MS. WENDLANDT: I'll take notes on 10 that because that's the official exhibit. 11 MR. SHIMOTO: I'd like to mark as 12 defendant's deposition Exhibit No. 107, I will just 13 call -- it's a Braun 5220 to Braun 5277, it is the 14 thesis of Stefan Zeischke. 15 (Exhibit No. 107 marked 16 for identification.) 17 Q. I'd just like to ask you if you've ever 18 seen this document before. 19 A. Yes, during the preparation for this 20 deposition. 21 Q. Topic No. 10 is the knowledge of or 22 awareness by any and all individuals covered by 37 23 USC section 1.56 (c) for the asserted patents of 24 Mr. Zeischke's thesis during or before the</p>	<p>Page 58</p> <p>1 MS. WENDLANDT: Objection. 2 A. I don't think so. I could check that, but 3 because the development went -- this is a cleaning 4 station for a shaver involving brushes and the like, 5 and the development, the actual development went in 6 the totally other direction, so I cannot imagine, 7 but if necessary, I will check that. 8 Q. Well, how would you find out if -- 9 A. I would go into our computer system or I 10 would go into Internet, look for inventor Zeischke 11 and application Braun AG at the time, if I find 12 something, I would look at it, and if I find 13 nothing, I would leave it. 14 Q. Is this thesis or the work embodied in the 15 thesis the property of Braun? 16 MS. WENDLANDT: Objection. 17 A. No, it's -- it's the property of -- it 18 would have been the property of Braun if Braun would 19 have filed a patent application on it. 20 Since then, you need to lead over the 21 rights from the inventor, Mr. Zeischke, to Braun, 22 but in case there is no patent application, the 23 rights were with Mr. Zeischke. 24 Q. Okay. So it would be necessary to</p>

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<p style="text-align: right;">Page 61</p> <p>1 determine whether Braun filed a patent application 2 to determine whether this is the property of Braun? 3 A. Yes, yes. 4 Q. If you could look at topic No. 11. 5 A. Yes. 6 Q. There it states, The knowledge of or 7 awareness by any and all individuals covered by 37 8 C.F.R. section 1.56 (c) for the asserted patents of 9 the ultrasonic cleaning device discussed at several 10 pages of Mr. Hoeser's deposition. 11 A. Mm-hmm. 12 Q. Do you see that? 13 A. Yes. 14 Q. Do you understand what is meant by the 15 ultrasonic cleaning device? 16 A. Well, I haven't seen it, but I understand 17 what an ultrasonic cleaning device is, and I don't 18 know the specialty wise, but what ultrasonic 19 cleaning device, I know about that. 20 Q. Well, are you aware that there is an 21 ultrasonic cleaning device used in the shaver 22 department currently at Braun? 23 A. No, I am not aware. 24 Q. So you have not seen this device?</p>	<p style="text-align: right;">Page 63</p> <p>1 answer to that. 2 A. Yes. 3 Q. Do you know whether Mr. Prahl knew about 4 the ultrasonic cleaning device? 5 A. I went through the prosecution files and 6 there's no correspondence regarding this ultrasonic 7 cleaning device, so I think Braun GmbH is of the 8 opinion that Eric Prahl did not know about that. 9 And further, we tried to reach 10 Eric Prahl and we got him, but he cannot remember 11 anything because it's a long time ago. 12 In the meantime, he has left 13 Fish & Richardson, so it's -- yes, so that can be 14 answered as probably no, but we do not know it 15 certain, that's it. 16 Q. Do you know in general does Braun 17 encourage -- does Braun the company encourage its 18 employees to provide all relevant prior art of which 19 they know in connection with -- 20 A. Yes, yes. 21 Q. Does Braun also typically inform -- well, 22 when a US patent application is filed, does Braun 23 the company typically inform its employees of the 24 duty to disclose all material information?</p>
<p style="text-align: right;">Page 62</p> <p>1 A. No, I haven't seen it. 2 Q. What did you do to prepare yourself to 3 answer questions regarding topic No. 11? 4 A. Yes, the -- the question is who of the 5 persons Mr. Klauer, Mr. Braun, Mr. Gebhard Braun and 6 Eric Prahl, these are the persons that have known 7 about that device, and I know from the depositions 8 of Mr. Hoeser cited here that Mr. Gebhard Braun knew 9 about it. 10 And in addition, I tried to reach 11 Mr. Hoeser, who is on vacation at the moment, 12 whether he could tell me since that is not clear 13 from the deposition whether Mr. Klauer knew about 14 it, that was unclear, but unfortunately, I could not 15 reach Mr. Hoeser up today. 16 I phoned him on his cell phone and his 17 company phone, but I couldn't get him, but maybe 18 that could be answered later on, if it is necessary. 19 Q. Well, I would like -- 20 A. That Mr. Hoeser could tell whether 21 Mr. Klauer knew about that ultrasonic cleaning 22 device or not. 23 Q. That is a fairly important question which 24 I would like an answer to, if you could find an</p>	<p style="text-align: right;">Page 64</p> <p>1 MS. WENDLANDT: Objection. 2 A. At the time the US application is filed, 3 that's your question? 4 Q. Mm-hmm. 5 A. I don't think so, because in 99 percent, 6 before we had the German application, and there, we 7 would also, not having this -- the duty of 8 disclosure, file all of that relevant prior art. 9 So we ask already the inventors before 10 filing the German application to provide us with 11 relevant prior art and then when foreign 12 applications are filed, discussion is not posed any 13 more because we claim priority, and under normal 14 circumstances, the prior art is identical in all 15 prosecutions. 16 Maybe there might be a slight 17 difference due to the difference in the -- in the 18 law, in the US law and European or German law 19 regarding novelty, the definitions are different, so 20 there could be, in exceptional cases, document be a 21 prior art document in the US, but not in Europe, and 22 the other way around, but yes, we -- patents is also 23 mass production, and so we cannot put endless time 24 in all this things and so it is not done.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. If you look at your deposition 2 notice that there's basically topics 13, 14, 15, 16, 3 17, 18, 19, there's a number of these which relate 4 to the translation. 5 A. Yes. 6 Q. And I know you talked with Mr. Sievers? 7 A. Yes, yes. 8 Q. In general, what document was provided 9 to -- well, with respect to the 328 patent, what 10 document was provided to Ms. Hubatsch for 11 translation? 12 A. Yes, so I give you the full information I 13 received this morning. 14 Mrs. Hubatsch got an order letter from 15 my secretary, Mrs. Cordes, that's an additional 16 question later on who the identity of the 17 individuals who provided the documents, so my 18 secretary Mrs. Cordes, sent to Mrs. Hubatsch a 19 letter, which the letter said, Please find attached 20 the German application documents. 21 Please translate them because we 22 intend to file in Japan, US and foreign filings. 23 In addition, this 146 patent is 24 enclosed for your reference, so Mrs. Hubatsch likes</p>	<p style="text-align: right;">Page 67</p> <p>1 MR. SHIMOTO: All right, I have it 2 wrong in the -- it's probably wrong in the dep 3 notice, so that's my own fault. 4 MS. WENDLANDT: Right. 5 Q. And I can mark all the exhibits, but are 6 you also aware that the claims and the counterpart 7 to the 328 patent changed from the original filing, 8 they were amended in October of 1994; correct? 9 A. No, I'm not aware, so maybe I will look on 10 the files. 11 Q. Sure. 12 A. So what you mean is the claims changed 13 from the original German language when being 14 translated to the English language? 15 Q. No, actually, the claims in the German 16 application were changed. 17 A. Mm-hmm, okay. 18 Q. So we'll mark as defendant's deposition 19 Exhibit No. 108 is the English version of Braun 1138 20 through 1145, let's mark as Braun -- excuse me -- 21 Rayovac deposition Exhibit No. 109 B00136 to B00146, 22 German version. 23 (Exhibits Nos. 108 and 109 24 marked for identification.)</p>
<p style="text-align: right;">Page 66</p> <p>1 it if we can provide her with prior art, with 2 original English language prior art to have -- have 3 the meaning of certain -- certain words to get that 4 better, so we provided to her this 146 patent, and 5 what is said, the application documents from the 6 German application, and then now Mr. Sievers 7 telephoned today or yesterday with Mrs. Hubatsch and 8 he said -- so she said she received -- she looked in 9 her files, she received the original application 10 documents, but there was inserted one page with the 11 evaluation of this French reference that was 12 inserted as page 3B or whatever, and she translated 13 all these papers. Is that clear? 14 So we sent her the 146 US document and 15 we sent her or Mrs. Cordes sent her application, 16 German language application documents which were, 17 beside one point, identical. 18 It was the original application that 19 was inserted on page 3B was the evaluation of this 20 French reference, these 20 lines or whatever. 21 MS. WENDLANDT: And if I could just 22 clarify, it's not the 146 patent, it's actually 23 reversed, it's the 416 patent. 24 A. Oh, that's -- that's --</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. SHIMOTO: I'll mark as defendant's 2 deposition Exhibit No. 110 B00126 to B0013 -- 135. 3 (Exhibit No. 110 marked 4 for identification.) 5 MR. SHIMOTO: And mark as defendant's 6 deposition Exhibit No. 111 the German version of 7 B00126 to B00135. 8 (Exhibit No. 111 marked 9 for identification.) 10 Q. If you could look at what I believe I 11 marked as the first one, so it would be -- it's the 12 document beginning October 24, 1994, which is 13 B00138. 14 A. Yes, yes, I see it, and actually, maybe 15 I've overviewed it in the prosecution files, but I 16 see here that Mr. Klauer filed a new claim with the 17 features of essentially claims 1, 7 and 7, I can see 18 it. 19 Q. Have you -- so sitting here now, you are 20 aware that the claims of the German application were 21 amended during prosecution in Germany? 22 A. Yes. 23 Q. Have you compared the claims of the US 328 24 patent application to the application, the German</p>

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<p style="text-align: right;">Page 69</p> <p>1 application, which was filed in the 328 application? 2 A. No. 3 Q. Want me to mark the 328? I know we've got 4 a bunch of papers here. Do you understand the 5 question? 6 A. So you mean -- your question is whether 7 the claim originally filed in the US application is 8 identical to the claim of features 1, 7 and 9, our 9 original claim, or what is the question? 10 Q. Let me try and ask it an easier way. What 11 claims did Mrs. Hubatsch translate when she was 12 making the translation for the 328 patent 13 application? 14 MS. WENDLANDT: Objection. 15 A. I thought she translated the original 16 claim. 17 Q. Okay. Do you know if the claims in the US 18 patent application match up with the original claims 19 or the amended claims? 20 A. I'd have to look at it, so -- 21 Q. I apologize, but this is what we do, it's 22 a lot of paper, there's no way around it. 23 MR. SHIMOTO: I'd like to mark as 24 defendant's deposition Exhibit No. 112 the</p>	<p style="text-align: right;">Page 71</p> <p>1 If I could direct your attention to 2 B001103, there's claim 1, and I represent to you 3 that is the original application claim. 4 MS. WENDLANDT: It's a translation of 5 it, right. 6 MR. SHIMOTO: It's a translation of 7 it; that is correct. 8 (Exhibit No. 113 marked 9 for identification.) 10 (Pause.) 11 A. Okay. Yes, there's a difference. 12 Q. Do you know how Mrs. Hubatsch would have 13 come to translate the amended application claim 1 14 and not the original application of claim 1? 15 A. Well, as I told you, Mrs. Hubatsch got, 16 per this order letter, copies of the -- of documents 17 which were named in that order letter above 18 mentioned application, and it was this 4,402,238 19 application, and there was added at least what we 20 saw one -- one additional page, it's this evaluation 21 of the prior art, and I have no idea, but that must 22 have been -- or should be checked. 23 Whether she also got the amended 24 version of the claims, I don't know from the</p>
<p style="text-align: right;">Page 70</p> <p>1 prosecution history for US patent No. 5,711,328. 2 (Exhibit No. 112 marked 3 for identification.) 4 Q. I believe you can find claim 1 in the 5 application at B00169. 6 A. 00169, yes, I have it, and that has to be 7 prepared with the claim of Mr. Klauer's letter of 8 October 24, 1994, that's right? 9 Q. Yes. 10 (Pause.) 11 A. So claim 1, according to B00169, is 12 practically identical to this claim (indicating). 13 Q. Have you seen the original claim 1? 14 A. No. Have you -- 15 Q. I do have it, I can show it to you. This 16 will be in -- wait a minute, I have to give you 17 another document, mark them all. 18 Let's mark as defendant's deposition 19 Exhibit No. 113 a document bearing the Bates range 20 B001097 to B001114, it's a German unexamined patent 21 application. 22 A. Okay. 23 Q. I didn't hand you something -- okay, 24 sorry, too much stuff going on here.</p>	<p style="text-align: right;">Page 72</p> <p>1 timing -- just a moment -- oh, look (indicating). 2 This revised version of the claim, so 3 that limited claim was filed in October 24 and as 4 far as I recall, October -- the order letter to 5 Mrs. Hubatsch was sent in November 21, so one month 6 later might be that she also got the revised version 7 of the claims. 8 Q. Does this order letter still exist to 9 which you refer? 10 A. Well, I have to check that when I'm back, 11 I didn't see it here in the files and I -- I will 12 check that. 13 Q. Okay. But you believe that Mrs. Hubatsch 14 would have received documents in approximately 15 November 1994? 16 A. Yes. 17 Q. How do you know that? 18 A. Because Uwe told me there was a term -- a 19 handwritten notice that she wanted to have the 20 translation to one month later to December 21, 21 that's what he told me. 22 Q. So did the notation say that she needed a 23 month to complete the translation? 24 A. Yes, yes, and so I had in my mind the 21st</p>

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<p style="text-align: right;">Page 73</p> <p>1 of December, I think, so -- but we will check that 2 and we will provide --</p> <p>3 Q. Did you -- did you ask -- Mr. Sievers 4 spoke with Mrs. Hubatsch; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did he ask her whether she literally 7 translated the original application or she changed 8 the application in any way?</p> <p>9 MS. WENDLANDT: Objection.</p> <p>10 A. I know Mrs. Hubatsch was still working for 11 us, and I'm certain she would never change without 12 any instructions from Braun the text and she would 13 never certify if there would have been changes that 14 this is a translation of the original.</p> <p>15 I think she got from Braun from 16 Mrs. Cordes for whatever reasons, we have to check 17 that, documents which she believed to be the 18 original documents and she translated them and 19 certified them.</p> <p>20 So I think that was the way how it 21 went, but I'm not sure, and from our file copies, we 22 cannot -- because what we -- was a clause to this 23 order letter does not exist as a copy, we do not put 24 the paper we send to Mrs. Hubatsch an additional</p>	<p style="text-align: right;">Page 75</p> <p>1 foreign, or there is some prior art, but I -- I -- I 2 have at the moment no -- no -- I can't explain that, 3 that was the word that I want, what I was looking 4 for, but we will recheck that.</p> <p>5 Maybe we will find in her files what 6 we actually sent her. I don't know whether she kept 7 that for 12 years or how long it is.</p> <p>8 Q. Well, I guess, you know, based upon at 9 least the insert in claim 1, Braun is aware 10 that -- what the original application and the 11 translation in the 328 patent application, there are 12 differences between them; is that correct?</p> <p>13 A. Yes, but it's also not a -- I think not a 14 must to file a US application it's identical to the 15 German application, that it's -- there is no rule 16 which it's only question whether you can claim 17 priority or not.</p> <p>18 So if it is a different invention, 19 then you cannot claim priority and you do not have 20 this additional 12 months' grace period, that's all, 21 it's all -- but I think that's --</p> <p>22 Q. Okay, well, let's take it in pieces.</p> <p>23 A. Yes.</p> <p>24 Q. Braun is aware that there is a difference</p>
<p style="text-align: right;">Page 74</p> <p>1 copy to our files just to save the paper and that 2 not be too big.</p> <p>3 So she has to clarify or she -- she 4 might be in a position to clarify what she received 5 and what I did not see up to now is this amended 6 claim, I only saw the -- the -- the --</p> <p>7 (The witness talks 8 with the interpreter.)</p> <p>9 THE INTERPRETER: The insertion.</p> <p>10 A. -- the insertion of this additional prior 11 art reference, the French reference, and that's the 12 only difference.</p> <p>13 Q. Okay.</p> <p>14 A. And so I -- we only looked for this issue, 15 and that was -- that can be explained she got from 16 Braun Gmb- -- Braun AG at that time, she got papers 17 which had to be translated where this insert was 18 added.</p> <p>19 Q. So she had been instructed to add that 20 insert?</p> <p>21 A. I can't tell you, I can't tell you.</p> <p>22 Q. Okay.</p> <p>23 A. Because that's really unusual. Normally, 24 we file the -- the application as it is also</p>	<p style="text-align: right;">Page 76</p> <p>1 between what the German paper files and the 2 translation to the US application?</p> <p>3 A. Yes, yes, yes.</p> <p>4 Q. And Braun does not know why, sitting here 5 today, Braun does not know how that the differences 6 occurred?</p> <p>7 A. Well, we know that the papers sent to 8 Mrs. Hubatsch had an additional page was this 9 evaluation of the French reference, and why -- and I 10 also see that Mrs. Cordes, she is assistant to 11 secretary, will not put this paper on her own into 12 the application, that's how it's translated by, so 13 she must have been advised by Mr. Klauer to do so, 14 but for what reasons and whether she also put other 15 claims to the -- to the -- in German language to the 16 stuff which should be translated by Mrs. Hubatsch, I 17 don't know, but I didn't see this problem until now 18 you put me on it, so I have to check that.</p> <p>19 Q. Okay. Are you aware that during the 20 prosecution of the 328 patent, that the patent 21 office said that there wasn't an English translation 22 file for the German original; correct?</p> <p>23 A. Yes, yes, notice of missing parts.</p> <p>24 Q. Yes, and are you also aware that</p>

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<p style="text-align: right;">Page 77</p> <p>1 Braun -- well, Fish & Richardson on behalf of Braun 2 filed a document saying, Well, yes, we had in fact 3 filed a translation of the German original? 4 A. Yes. 5 Q. And sitting here today, is it Braun's 6 position that the paper filed by Fish & Richardson 7 is accurate? 8 MS. WENDLANDT: Objection. 9 A. Well, I think everybody at that point of 10 time thought the English language US application is 11 a word by word translation of the US application. 12 The one person who should not believe 13 that could have been Mr. Klauer because he, for 14 whatever reasons, put something in it, but, for 15 instance, Fish & Richardson will not check whether 16 the translation is identical to the German original 17 so they have a certified translation, I think they 18 rely on it, and so Fish & Richardson, they believed 19 it is a true and certified translation and relied 20 upon it, and maybe Mr. Klauer could have said 21 something to that, but -- 22 Q. Well, did Mr. Klauer -- do you know if 23 Mr. Klauer discussed with Fish & Richardson the 24 notice to file missing parts of the application?</p>	<p style="text-align: right;">Page 79</p> <p>1 MS. WENDLANDT: Objection. 2 Q. Or -- or -- let me rephrase -- 3 A. His secretary did it. 4 Q. Do you know whether Mr. Klauer interacted 5 with Mrs. Hubatsch in terms of what her 6 responsibilities were? 7 MS. WENDLANDT: Objection. 8 A. Can you repeat your question? 9 Q. Sure. Did Mr. Klauer provide instructions 10 to Mrs. Hubatsch as to the scope of her 11 responsibilities? 12 A. What scope of responsibilities? 13 Q. Let me withdraw that question and just 14 restate it. 15 Did Mr. Klauer tell Mrs. Hubatsch what 16 she was expected to do with the documents which had 17 been transmitted to her? 18 A. She should translate them from German to 19 English language, that was the purpose why we 20 involved or why she was involved in this. 21 Q. And how did Fish & Richardson receive the 22 translation from Mrs. Hubatsch? 23 A. The -- I can't tell you how it went this 24 way, but normally, at that time, there was no</p>
<p style="text-align: right;">Page 78</p> <p>1 A. No, I don't think so, because actually I 2 think Fish & Richardson saw in their files or in 3 some documents got -- they received back from the US 4 PTO that English translation application was filed 5 and the US PTO told we didn't receive it, so they 6 put the thing on it and said well, look here, we 7 filed the English language translation, and that was 8 it, and then the US PTO agreed, I think, and that it 9 was -- the petition was granted. 10 Q. With respect to the amendment made to the 11 original German counterpart application, that was 12 done by Mr. Klauer; correct, there's a number of 13 documents here -- 14 A. You mean the German -- 15 Q. Yes, the German counterpart to the 328 16 patent. 17 A. So the first application. 18 Q. Yes, yes. 19 A. Yes, they were made by Mr. Klauer, yes. 20 Q. So Mr. Klauer was aware that the German 21 counterpart application had changed; correct? 22 A. Yes, I think so, yes. 23 Q. And Mr. Klauer provided the documents to 24 Mrs. Hubatsch; correct?</p>	<p style="text-align: right;">Page 80</p> <p>1 e-mail, we had no e-mail, and I think it was 2 unusual, it was all sent by paper. 3 So we send it, the German text, 4 whatever it was, to Mrs. Hubatsch, Mrs. Hubatsch 5 made the translations, send it -- the English text 6 back, maybe it was a diskette, so that you have a 7 word document, but that was it, and then we -- we 8 put all the stuff for the US application and the 9 Japanese application together and send it to 10 Fish & Richardson and Japanese attorneys, that's how 11 it worked. 12 Q. And that would have been Mr. Klauer and in 13 the case of the asserted patents, that he would have 14 then sent those materials to Fish & Richardson? 15 A. Well, it's a -- to put all the documents, 16 it's a package of paper like this (indicating) to 17 file for an application, and priority document and 18 translation, prior art, if there is any, so it's a 19 lot of paper. 20 This is put together by the 21 assistants. Then you have an order letter, please 22 file it in Japan or in the US, and two persons, 23 Mr. Klauer and me or Mr. Klauer and any other sign 24 it and it's sent away, but the -- the -- putting</p>

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<p style="text-align: right;">Page 81</p> <p>1 together these documents is done by the assistant 2 and nobody will go through all the papers and read 3 each and every word to look whether it's all correct 4 or not, it's translated and certified and then it 5 runs, goes off to the foreign -- foreign law firms. 6 MS. WENDLANDT: Jim, if this is a good 7 time for a break -- 8 MR. SHIMOTO: Yes, this is a good time 9 for a break, why don't we take -- I could use one. 10 MS. WENDLANDT: Want to take five 11 minutes? 12 MR. SHIMOTO: Yes. 13 THE VIDEOGRAPHER: Going off the 14 record, this marks the end of videotape No. 1 in the 15 deposition of Wolfgang Vorbeck, the time is 16 11:12 a.m. 17 (Discussion held off the record.) 18 THE VIDEOGRAPHER: We're back on the 19 record, this marks the beginning of videotape No. 2 20 in the deposition of Wolfgang Vorbeck, the time is 21 11:27. 22 Q. If you could direct your attention first 23 to topic No. 12 and also topic No. 20 in the 24 30(b)(6) deposition notice, and what did you do to </p>	<p style="text-align: right;">Page 83</p> <p>1 A. Well, I think so. If you look at the 2 answer of -- to this communication of the patent 3 office -- oh, no after that, I think -- am I right? 4 There was the telephone interview. 5 Q. That's correct. 6 A. Yes, so let me put it in this way: 7 The -- this -- 8 Q. The telephone interview is at page 374. 9 A. Yes, yes, I know, but -- so this letter 10 from the US patent office says under B, and you're 11 right, at claims 1, 7, 8, 9 and so on are rejected 12 because of several reasons, and then they say under 13 D, claims 2 to 6 are objected to as being dependent 14 upon a rejected claim, but would be allowable if 15 rewritten. 16 And since Braun did not rewrite the 17 claims as recommended here, so we did not agree with 18 the opinion, the claims were amended in another 19 kind. Do you understand what I want to say? 20 Q. Sure. 21 A. So that if you would have agreed with this 22 statement, we would have drafted or put the claims 23 in the form as recommended here by the examiner to 24 get notice of allowance, but we didn't. </p>
<p style="text-align: right;">Page 82</p> <p>1 make -- prepare yourself to answer questions 2 regarding those two topics? 3 A. Well, as I told you, we tried to -- to 4 talk with Eric Prahl on this issue, he cannot 5 remember, and so I looked at -- at the files. There 6 is one page regarding this telephone interview, it's 7 minutes of telephone conference or whatever, and the 8 substance is that during this telephone conference, 9 the claim was amended by putting I think the concave 10 feature to the cradle structure and that there's a 11 hole or whatever where the liquid can pour out of 12 the cradle. That's the substance of this telephone 13 interview. 14 Q. See if you can look to the 328 file 15 history, do you have that, page 366, item B -- 16 A. Yes. 17 Q. -- on the second sentence, it states, re 18 claim 1, the patent to Mekiney and Hilliker and are 19 cited disclosing a cleaning device comprising a 20 cradle, 12 and 6 respectively? 21 A. Yes, yes. 22 Q. And then after that -- well, my first 23 question is: Did Braun disagree with the examiner 24 that Mike Mekiney disclosed a cradle? </p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Okay. Well, you had the telephone 2 interview; correct, if you look at page 374; 3 correct? 4 A. Yes. 5 Q. And it states there that Hilliker and 6 Mekiney were discussed; is that correct? 7 A. Yes. 8 Q. And then underneath there, it says it was 9 noted that claim 1 would be amended to include the 10 shape of the cradle concave and the drainage port at 11 the base of the concave cradle and to include the 12 bracket? 13 A. Yes, yes. 14 Q. Why was it agreed that claim 1 would be 15 amended in that manner? 16 MS. WENDLANDT: Objection. 17 A. I can't tell you because I only saw this 18 was the third or fourth objection by the examiner, 19 really long examination procedure as compared to 20 usual examination procedures, maybe they wanted -- 21 (The witness speaks 22 with the interpreter.) 23 THE INTERPRETER: In vague 24 context -- I mean, if you can translate this </p>

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<p style="text-align: right;">Page 85</p> <p>1 literally, this would be to open the knot, knot, 2 K-N-O-T. 3 A. The examiner always had objections, then 4 the applicant reacted by amended claims or some 5 arguments and the examiner objected again, then the 6 applicant meant -- and that went three or four 7 times, so what I would do in such circumstances 8 would speak with the examiner because I see maybe in 9 writing will not come across, so that was the 10 reason, but I think Braun did not agree with the 11 statement in this last -- last letter from the US 12 PTO that the both references, Mekiney and the other 13 one, would -- would have novelty or -- on claim 1 14 was obvious for the combination of these two 15 references, that was not agreed, otherwise, we would 16 have accepted the recommendation of the examiner to 17 rewrite the claims as suggested.</p> <p>18 Q. During this telephone interview, did Braun 19 tell the examiner that Mekiney did not disclose a 20 cradle structure?</p> <p>21 MS. WENDLANDT: Objection.</p> <p>22 A. I don't know, I was not aware, Mr. Klauer 23 was not aware, this telephone interview was run by 24 Mrs. P. Kristal, she is or was, I don't know, an</p>	<p style="text-align: right;">Page 87</p> <p>1 knowledge as to what Braun may have told the 2 examiner about the Mekiney reference? 3 A. Yes. 4 Q. So beyond what is stated here in the 5 prosecution history, Braun has no additional 6 knowledge to add? 7 A. No, no. 8 Q. And again, could you just tell me what 9 Braun did to gain knowledge with respect to the 10 subject or what you did to gain knowledge with 11 respect to the subject matter we've been discussing? 12 A. Yes, this is a detail of the US 13 prosecution of a Braun case, and the person who 14 could give me additional information besides what 15 can be found in the files would be Mr. Klauer, 16 that's not possible, or that could be Mr. Eric Prahl 17 or this Mrs. -- this other attorney. 18 And we ask Eric Prahl and he couldn't 19 say more than or he could not remember anything, and 20 that's it, so where could I get additional knowledge 21 from? 22 Q. Did you talk with Mrs. Kristal? 23 A. No, I didn't. 24 Q. Do you know if Mrs. Kristal still works at</p>
<p style="text-align: right;">Page 86</p> <p>1 attorney Fish & Richardson, and what they discussed, 2 we have no indications, and that's all here what we 3 have. 4 Q. Well did you talk with Mrs. Kristal? 5 A. I can't -- I did not talk with her because 6 if one would have talked, it must have been 7 Mr. Klauer, but I don't know. 8 Q. If you look to page 382, at the top 9 sentence -- at the top in the top sentence, it 10 states, Mekiney's merely teaches a rectangular tank 11 12, not a cradle structure having a concave surface, 12 do you see that? 13 A. Yes, yes. 14 Q. During the telephone interview, did Braun, 15 by and through its attorneys, tell the examiner that 16 it was going to change the cradle structure 17 limitation to include a concave surface to get 18 around the Mekiney reference? 19 MS. WENDLANDT: Objection. 20 A. I can't tell you. For Braun, I have no 21 information why this amendment was made, I can't 22 tell you anything about that. 23 Q. Well, sitting here today speaking on 24 behalf of Braun, is it correct that you have no</p>	<p style="text-align: right;">Page 88</p> <p>1 Fish & Richardson? 2 A. I don't know. 3 Q. If you'd look at topic 21, which is any 4 and all investigations made by an individual covered 5 by 37 C.F.R. 1.56 (c) during prosecution of the 6 asserted patents regarding one, the level of skill 7 in the art, and two, whether particular prior art 8 was analogous or nonanalogous art. Do you see that? 9 A. Yes. 10 Q. And what did you do to prepare yourself to 11 answer questions regarding this topic? 12 A. Again, I went through files and that's it. 13 The persons here, Mr. Braun, Gebhard Braun 14 definitely gave no input in this regard, he is no 15 patent expert, he will not know what prior art is or 16 whether prior art will be analogous or not 17 analogous, and Mr. Klauer cannot give any more 18 information and Eric Prahl does not remember. 19 So I read the files and I saw that 20 there were some discussions regarding special 21 documents, whether they are analogous or 22 nonanalogous prior art, that's -- that's -- these 23 are the investigations, Braun GmbH knows about. 24 Q. Well, you know, and I can mark the file</p>

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<p style="text-align: right;">Page 89</p> <p>1 history, but you have seen the arguments made with 2 respect that this reference is not analogous and 3 that reference is not analogous? 4 A. Yes, yes. 5 Q. How did Braun come make the determination 6 that a particular reference cited by the examiner 7 was analogous or not analogous or -- 8 A. Well, that -- that can be read in the 9 prosecution history. It was prior art directed 10 to -- I have to look at it, but -- let's take the 11 prior art, then. 12 Q. Sure. 13 A. And we can -- the arguments -- 14 Q. We can mark this one as an example, mark 15 as defendant's deposition Exhibit No. 114 US patent 16 No. 3,890,988, the Lee patent. 17 A. Mm-hmm. 18 Q. This is one of the references that Braun 19 argued -- if you'd like to see the place in 20 the -- would you like to see the prosecution history 21 where that was argued? 22 A. Yes, please. 23 Q. We'll mark as defendant's deposition 24 Exhibit No. 115 US patent No. 5,649,556.</p>	<p style="text-align: right;">Page 91</p> <p>1 documents or could he have combined them, it's not 2 sufficient that he could have combined them, 3 according to European perspective, but that he would 4 have combined them. 5 He must have an indication to put 6 the -- both documents together, and you call that 7 here, according to US patent law, analogous or 8 nonanalogous prior art, and that's -- that's special 9 US law and therefore we have our US patent attorneys 10 who deal with this issue, so we are not the experts 11 regarding US law, we would -- we would argue before 12 the European patent office or the German patent 13 office, Mr. Klauer, for instance, but not -- this 14 was done by Fish & Richardson. 15 Q. Okay. So -- I guess so now I guess that 16 we have that in mind, you are aware that there were 17 several places where the argument was made 18 regarding nonanalogous art -- 19 A. No, this was only example, the European 20 patent, not parallel to this one, but to the other 21 US patent, we had nothing like that, and I think 22 here too we got relative broad protection. 23 It was just an example generally 24 speaking, this problem of analogous and nonanalogous</p>
<p style="text-align: right;">Page 90</p> <p>1 (Exhibits Nos. 114 and 115 2 marked for identification.) 3 Q. Probably find that at B0095, or B95. 4 A. Okay. 5 (Pause.) 6 A. Well, here the -- 7 MS. WENDLANDT: Well, let's wait for a 8 question. 9 A. Okay, a question? 10 Q. Sure. You see it -- you see that there's 11 an argument regarding the Lee patent; correct? 12 A. Yes. 13 Q. And my question is: Before making this 14 statement to the United States Patent and Trademark 15 Office, what investigation did Braun conduct to 16 determine that the Lee patent was, in fact, 17 nonanalogous art? 18 A. Braun served its law investigations, that 19 is the objective or the task of the US attorneys, so 20 they look -- this -- this problem analogous or 21 nonanalogous prior art, that's special US issue, and 22 in, for instance, before the European patent office 23 you call that similar problem the would could test, 24 so would a person have combined two prior art</p>	<p style="text-align: right;">Page 92</p> <p>1 prior art is special US feature for US patent law 2 and US patent prosecution. 3 In Europe, we call it another way, 4 round would could test and there are maybe some 5 similar, but also other approaches to it, and so I 6 wanted to set forth that such -- such questions had 7 to be answered by the competent US lawyers, not by 8 Mr. Klauer or whoever else was involved, this is a 9 special problem related to US law, and therefore, we 10 take our -- our experts in US law, and these are the 11 outside US attorneys. 12 Q. Okay. 13 A. So that's what I wanted to say. 14 Q. Yes. So just let me make sure I'm clear. 15 So when arguments were made with respect to the 16 patents regarding analogous or nonanalogous art, 17 Fish & Richardson was not asking engineers at Braun 18 whether they considered the art pertinent or not? 19 A. Yes, yes. 20 Q. I'd like to mark as defendant's deposition 21 Exhibit No. 116 a document bearing the Bates range 22 B1069 to B1073, it also has the English and German. 23 I'd like to ask you if you've ever 24 seen this document before?</p>

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<p style="text-align: right;">Page 93</p> <p>1 A. Let me just -- 2 Q. No problem. 3 A. The first page I saw, but -- 4 (Exhibit No. 116 marked 5 for identification.) 6 (Pause.) 7 A. This is the invention disclosure regarding 8 the 581, that's the -- this (indicating) patent, I 9 think, the 328 patent, but I cannot exactly remember 10 whether I saw it with these remarks here, so these 11 handwritten remarks. 12 Q. Just so the first preliminary question, do 13 you recognize that handwriting? 14 A. Yes. 15 Q. Whose handwriting? 16 A. It's Dieter Klauer. 17 Q. After Mr. Klauer's passed away, did his 18 files come to reside with any Braun employee? 19 A. What means to reside? 20 Q. Or were his files transferred to any Braun 21 employee? 22 A. Yes, to Uwe Sievers. 23 Q. Do you know if this document with 24 Mr. Klauer's handwriting would have come from his</p>	<p style="text-align: right;">Page 95</p> <p>1 there is also the prosecution history of the German 2 file in it. 3 So we have another file there, we have 4 the US file and another European one, which splits 5 later on, and several French and so on, and 6 all -- and these files are in a cupboard. 7 (The witness speaks 8 with the interpreter.) 9 THE INTERPRETER: In a filing 10 cupboard. 11 A. Yes, and when Dieter Klauer went away, his 12 successor was Uwe Sievers and he was responsible for 13 something, so he had to deal with these files, it 14 was not so that we had this invention disclosure and 15 was on Dieter's table and it was forwarded to -- 16 Q. I understand. 17 A. So it's -- and you must know at that time, 18 this file was similar to a hundred other files, we 19 had no litigation, nothing, so why should we put 20 special -- special attendance just to this file. 21 Q. Okay. 22 A. We have hundreds of patents on shavers, 23 so -- 24 Q. I believe we were discussing, if you look,</p>
<p style="text-align: right;">Page 94</p> <p>1 original files? 2 A. Once more, please. 3 Q. Do you know if defendant's deposition 4 Exhibit No. 116, the German version of it, at least, 5 would have come from Mr. Klauer's original files? 6 A. Do you mean that he wrote that? 7 Q. Well, when -- you understand that Braun 8 collected documents and they were produced to 9 Rayovac in connection with this litigation? 10 A. Yes. 11 Q. Would this have been one of the documents 12 that now is with Mr. Sievers, but would have 13 originally been with Mr. Klauer? 14 A. Look, our files look similar like yours, 15 we have -- 16 (The witness speaks 17 with the interpreter.) 18 THE INTERPRETER: We have a 19 classification device, you can call it files, a 20 filing system. 21 A. No, no -- yes, and we put -- therein is 22 the invention disclosure, if you talk about the 23 German file, the invention disclosure. 24 There is some other stuff in it, and</p>	<p style="text-align: right;">Page 96</p> <p>1 at the signature line -- 2 A. Yes. 3 Q. -- is what we were discussing earlier, I 4 believe it states in English, roughly translated, It 5 is hereby assured that all information was provided 6 to the best of my knowledge and that no additional 7 inventors participated in creation of the invention? 8 A. Yes. 9 Q. That's the statement that we were 10 discussing earlier? 11 A. Yes. 12 Q. And it's been your expectation and 13 experience that Braun employees are generally honest 14 when signing that? 15 A. Yes, yes. 16 Q. Do you see next to that oath, there is a 17 place, or there's in the chart there, where it says 18 share an invention percentage? 19 A. Here, yes, yes. 20 Q. Yes, what is the purpose of that entry or 21 that column? 22 A. That's only for calculation of inventors 23 compensation. 24 Q. Okay. So say, for example, someone</p>

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<p>1 contributes 90 percent to an invention and 2 someone -- 3 A. The other 10, so he gets 90 percent and 4 the other, 10 percent. There are other factors, but 5 it depends whether you are in a high level position 6 or low level position, it's not expected from you if 7 you're in a lower level position to make big 8 inventions, so you will get more money if you are a 9 worker or whatever than the head of R and D, so 10 there are -- but one point is also someone who 11 contributes more to the invention gets more. 12 Q. I know you'd mentioned earlier that Braun 13 has contemplated compensating Dr. Pahl; is that 14 correct? 15 A. Contemplated? 16 (The witness speaks 17 with the interpreter.) 18 A. Yes. 19 Q. Has there been any thought given to what 20 percentage of compensation is due to Dr. Pahl and 21 what percentage is due to Mr. Braun going forward? 22 A. No, we -- look, the intention of Dr. Pahl 23 was, by not being cited here, not to get any money, 24 but now due to all this litigation, Braun was forced</p>	<p style="text-align: right;">Page 97</p> <p>1 MS. WENDLANDT: Objection. 2 A. Who? 3 Q. Mr. Braun, Gebhard Braun, has he -- 4 A. No, no inventor would say that. 5 Q. If you see there, it says, and one of the 6 topics is that it's hereby assured that all 7 information is provided with that oath, roughly 8 speaking, that signature block where it's on -- here 9 on the front, the -- 10 A. Yes, yes, yes. 11 Q. That roughly corresponds with an oath in 12 German application; is that correct? 13 A. Well, it's not an oath, we would not call 14 it an oath, it's just a signature. 15 (The witness speaks 16 with the interpreter.) 17 Q. When you say it's just a signature, what 18 is the purpose of that in German applications? 19 MS. WENDLANDT: Objection. 20 A. You mean this other form? 21 Q. Yes. 22 A. That's not a Braun form, it's a standard 23 form which you can get or which you just use to fill 24 out the inventorship, and that was not produced by</p>
<p>1 to put him on the inventors list in the US 2 prosecution. 3 And I think -- I don't know how that 4 will come out, but I think Mr. Pahl will get some 5 lump sum payment or whatever just to compensate him 6 for all the things he had to suffer here, for 7 instance, his deposition and all that stuff. 8 Q. That's not that bad, is it? 9 A. Yes, but, see, it's like that, so he never 10 said that he wants to have compensation. That was 11 one of his main reasons not to be put here on the 12 list, so he does not now approach, as Braun says, 13 Hey, now, I'm coinventor, I want to have 14 compensation, that's not what he is doing, so it's 15 on the -- or fair -- fair -- 16 (The witness speaks 17 with the interpreter.) 18 THE INTERPRETER: It's a fair gesture. 19 A. -- fair gesture by Braun to just give him 20 some compensation for all this stuff which is going 21 on. 22 Q. In that regard, conversely, has Mr. Braun 23 come to Braun and said, You've given me too much, 24 I'd like to get some back?</p>	<p style="text-align: right;">Page 98</p> <p>1 Braun, so I don't know what the purpose of this 2 other form, you don't have it here, I don't think 3 so... 4 Q. No. Well, if you lie regarding 5 inventorship in Germany -- 6 A. Yes. 7 Q. -- what is the effect of that? 8 MS. WENDLANDT: Objection. 9 A. No, no effect, regarding -- no effect 10 regarding the validity of the patent. 11 Q. Well, is there any affect? 12 MS. WENDLANDT: Objection. 13 A. Well, there is an effect regarding 14 inventor's compensation, for instance, but you can 15 put the wrong inventors on a German application, the 16 application is not invalid for these reasons, or the 17 patent, the later patent. 18 Q. So there is -- well, how is inventor's 19 compensation -- to the extent you know, how is 20 inventor's compensation affected if one inventor 21 lies about inventorship? 22 A. Well, if he -- if he actually is not 23 inventor, the amount he receives, that's -- that's 24 what's the problem, then, or if some others are</p>

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<p style="text-align: right;">Page 101</p> <p>1 not -- not cited, the -- they do not receive 2 inventorship, so that's a problem -- not 3 inventorship, inventor's compensation. 4 Q. So at least there is a reason for naming 5 the inventors under German patent law? 6 MS. WENDLANDT: Objection. 7 A. Not patent law, inventor's compensation. 8 Q. Okay. Well, there is a reason to 9 ascertain the correct inventors in the German law? 10 A. Yes, yes. 11 Q. And one of the -- pile of stuff here -- 12 topic No. 24, it's any and all training, instruction 13 or other guidance given to Braun employees prior to 14 or during the prosecution of the asserted patents 15 regarding invention applications and disclosure of 16 all individuals who participated in the development 17 of an invention. Do you see that? 18 A. Yes. 19 Q. Are Braun employees given any 20 instruction -- well, let me ask this question in a 21 more concrete form. 22 Invention applications such as what we 23 were discussing before, does the patent department 24 provide them any assistance or any instruction</p>	<p style="text-align: right;">Page 103</p> <p>1 behalf of Braun, not yourself. 2 A. Yes, yes, I told you at that time, we had 3 not these regular seminars like we have now, since 4 three, two, three, two, four years, and only in 5 cases where problems arose, the patent department 6 talk with these group of persons who had problems 7 regarding inventorship. 8 And so from the files, and in case 9 there would have been problems, Dietrich Klauer 10 would have talked with both of them or one of them 11 and I know about -- I know nothing about that. 12 Q. Well, for example, in connection with the 13 328 patent prosecution, and we can get to the page, 14 but are you aware that Mr. Braun signed both in 15 connection with the filing of this patent? 16 A. You mean the declaration? 17 Q. Yes, B0026 or B261. 18 A. Yes. 19 Q. Do you know if anyone discussed this 20 declaration with Mr. Braun? 21 A. No, I don't. 22 Q. Do you know how it came to -- do you know 23 how this document came to be in Mr. Braun's 24 possession when he signed it?</p>
<p style="text-align: right;">Page 102</p> <p>1 regarding -- 2 A. Well, at that time, I don't think so. In 3 our days, we have yearly or two yearly, not two 4 yearly, every two years a seminar, and especially 5 new attorneys attend these seminars and there is 6 also something said about how to -- to fill out this 7 invention disclosure, who might be co-inventor, but 8 at that time, we had not regularly information for 9 the inventors, only in such cases as I told you 10 some -- an hour ago, if there were problems, 11 problems arising between one group and an additional 12 inventor that he was not cited, and we talk with all 13 these individuals and then they have to agree what 14 happens, but it was not regular communication, only 15 if in the past, problems arose, then we talk with 16 these problem groups, I shouldn't say it like that. 17 Q. Well, do you know, for topic No. 25, it 18 talks about training or guidance given to 19 Gebhard Braun or Dietrich Pahl. 20 Do you know if either of them ever 21 received any training or guidance regarding inventor 22 or inventorship or invention applications? 23 A. I can't tell that, I don't know. 24 Q. Well, and I'm asking you to speak on</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I don't know that, but I know how these 2 documents regularly come into -- or how they are 3 signed, the secretary assistant calls the person, 4 the inventor, he comes down to the patent 5 department, signs it and goes back to his office, so 6 that's how it works. 7 Q. Well, do you, and just regularly, do you 8 ask -- well, is it the practice of Braun's patent 9 department to ask employees to read documents such 10 as this declaration before they are signed? 11 A. Yes, as -- as an attorney or the patent 12 attorney, I would -- would say to every person that 13 this person should read the document before signs 14 it, not only German language declaration, but any 15 document. 16 But you have to see that this was 17 approximately one year or more after the first 18 filing in Germany, and they are -- practically all 19 was done. 20 The -- Mr. Gebhard Braun was the only 21 inventor for the German language application in 22 Germany, why shouldn't he be the inventor for the 23 practically identical English language US 24 application?</p>

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<p style="text-align: right;">Page 105</p> <p>1 Q. Well -- 2 A. The problems were before. 3 Q. Well, you -- do you know if -- do you 4 typically tell Braun employees that this document is 5 being signed under penalty of perjury? 6 A. No, I don't think so, that we tell it, and 7 where, is this penalty? Oh, I see it here, you can 8 be punished by paying money or imprisonment, okay, I 9 don't think we -- we -- 10 Q. I mean, do -- 11 A. No, in this special event, I can't tell 12 it, but I think the persons read it or read it not 13 and sign it. 14 Q. Topic No. 20 -- well, let me, I guess, to 15 finish up this thought, do you know if any attorneys 16 in the United States at Fish & Richardson would have 17 talked to Mr. Braun to discuss with him the oath 18 that he signed in connection with the prosecution of 19 the 328 patent? 20 A. No, I don't know that. 21 Q. Did you ask Mr. Prahl that? 22 A. Well, Mr. Eric Prahl was asked whether he 23 can remember anything, and he said no, so we -- the 24 answer is: We did not ask Mr. Prahl regarding this</p>	<p style="text-align: right;">Page 107</p> <p>1 handwriting on it? Is there any handwriting on 2 there? No. 3 (Exhibit No. 117 marked 4 for identification.) 5 Q. Do you recognize what has been marked as 6 defendant's deposition Exhibit No. 117? 7 A. This. 8 Q. Yes, that document. And what is it? 9 A. Well, it's a translation -- it's a 10 questionnaire, a written questionnaire which asks 11 some persons high up in the management, mostly R and 12 D people, sometimes also business management people 13 like Gilbert Greaves to evaluate the invention 14 disclosure regarding certain aspects. 15 So whether it's a good solution for 16 the problems or whether they agree to file a patent 17 application, and also whether -- do you consider the 18 inventor details to be correct, so that's -- that's 19 this questionnaire which we have. 20 Q. Is this a standard document from Braun? 21 A. Yes, yes, we send it for each and any 22 invention disclosure to the respective persons. 23 Q. And this is the one investigation that 24 Braun performed regarding inventorship?</p>
<p style="text-align: right;">Page 106</p> <p>1 special issue of whether he took contact with the 2 inventor and -- and gave him assistance or showed 3 him what to do or what not to do. 4 But I would say if an outside attorney 5 would ring up an internal inventor without my 6 knowledge, we -- I think that is not the best way to 7 cooperate. 8 Q. I understand. For topic No. 26, so it's 9 any and all investigations made by Braun regarding 10 the inventorship for the asserted patents and their 11 German equivalents, what investigations were made by 12 Braun? 13 A. Well, we have only one investigation in 14 this regard, and that's the questionnaire which is 15 sent to the head of the inventor or the group of 16 inventors, so here in this regard to Dieter Pahl, so 17 there is a questionnaire, you have it there. 18 Q. Yes. 19 A. And that is regularly done with each and 20 any invention disclosure. 21 MR. SHIMOTO: Let's mark this as 22 defendant Exhibit No. 117 Braun 00861. 23 A. Thanks. 24 Q. I didn't give you mine, did I, with</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Yes, yes. 2 Q. Do you expect that Braun employees will be 3 honest when filling out this investigation form? 4 A. Yes, I -- I expect that. 5 Q. And have you had any problems with people 6 being dishonest in filling out these forms? 7 MS. WENDLANDT: Objection. 8 Q. Let me put -- ask -- with respect to 6.1 9 where it says, Do you consider the inventor details 10 to be correct, have you had problems in the past 11 with individuals being dishonest with respect to the 12 answer to 6.1? 13 MS. WENDLANDT: Objection. 14 A. You mean -- you mean the people who judge 15 here? 16 Q. Yes. 17 A. No, no, never. 18 Q. So it's been your experience that people 19 in general, when they read invention 20 applications -- 21 A. Yes, these are -- in practice, these are 22 directors of the company, very high level, and 23 why -- so -- why should they do -- do 24 wrong -- wrong -- make wrong statements here?</p>

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<p style="text-align: right;">Page 109</p> <p>1 That's -- so I would not suspect -- expect that. 2 Q. And other than this investigation here, 3 there was no investigation, initial investigation 4 done into inventorship? 5 A. No, no, no. 6 Q. And is the reason that no additional 7 investigation was performed that the patent 8 department felt it could trust both this 9 investigation and the invention application filed by 10 Mr. Braun? 11 A. Once more, please. 12 Q. Was the reason that no additional 13 investigation into inventorship was performed by the 14 patent department was that patent -- well, 15 maybe this is becoming too many double negatives. 16 Is it correct that the patent 17 department performed no additional investigations 18 into inventorship because it believed that it could 19 trust what was represented in defendant's deposition 20 Exhibit No. 117 and in Mr. Braun's invention 21 application? 22 A. Yes. 23 Q. For topic No. 28, I think we have -- so 24 it's the identity of the external lawyer referenced</p>	<p style="text-align: right;">Page 111</p> <p>1 tell us who cannot is Mr. Klauer. 2 A. Yes, exactly. 3 Q. I understand. I'd like to mark as 4 defendant's deposition Exhibit No. 118, I apologize 5 for all the paper, the declaration which you filed 6 in July 8, 2004 with the court here in 7 Massachusetts, just if you recognize this document? 8 (Exhibit No. 118 marked 9 for identification.) 10 A. Yes, it seems to be my signature. 11 Q. Under paragraph 3, it states, I recently 12 learned that Dr. Dietrich Pahl made significant 13 contributions to the inventions disclosed in the 14 patents in suit, et cetera. My question is: How 15 did you learn of Dr. Pahl's contributions? 16 MS. WENDLANDT: I'm going to instruct 17 the witness not to answer to the extent it requires 18 communication between your lawyers and yourself to 19 be revealed, so to the extent you can answer that 20 without revealing any conversations between you and 21 myself and Mr. Patton, you can answer. 22 THE WITNESS: What -- what I 23 experienced during this discovery procedure without 24 talking to you, that can be --</p>
<p style="text-align: right;">Page 110</p> <p>1 by Gebhard Braun in his deposition at several pages? 2 A. Yes, yes. 3 Q. We have an interrogatory response 4 regarding that which states it's possibly 5 Mr. Sartorius? 6 A. Yes, it's Peter Sartorius, I think so, 7 too. 8 Q. And do you know whether Mr. Sartorius 9 would have worked with Dr. Pahl and Gebhard Braun in 10 preparing the application, patent applications for 11 the shaver cleaning system? 12 A. I -- I don't know that. 13 Q. And for topic No. 27, it's Mr. Klauer's 14 understanding of inventorship law in the 15 United States and Germany during the prosecution of 16 the asserted patents, I'll ask first to Braun's 17 knowledge, what was Mr. Klauer's understanding of 18 inventorship law in the United States during the 19 prosecution of the patents in suit? 20 A. I couldn't really tell you. He knew 21 something about it, but what his personal 22 understanding of the inventorship law in the 23 United States was, I can't tell you. 24 Q. So basically the only person who could</p>	<p style="text-align: right;">Page 112</p> <p>1 MS. WENDLANDT: That's right, yes. 2 A. So this litigation forced Braun to go 3 deeper into the history of this -- these two US 4 patents than you usually go to history, and we all 5 thought that Gebhard Braun is the sole inventor, all 6 documents showed that. 7 And when we evaluated the history of 8 the development of the clean and charge device, we 9 found this sample, this model built by the French 10 engineers, and we also learned that this was, what 11 Mr. Braun said, the starting point of his work, and 12 then we thought or we came to the conclusion if 13 Gebhard Braun started or his beginning of his R and 14 D work was this model and this model showed already 15 several features of the claims, that he could not 16 have been the sole inventor. 17 And so we came to the conclusion that 18 Mr. or Dr. Pahl, Dietrich Pahl should have been 19 co-inventor at least co-inventor or co-inventor, 20 because he -- or the model was built on his 21 instructions, on his behalf, that was why we came to 22 the conclusion that Gebhard Braun could not be the 23 sole inventor of this model. 24 Q. Who -- I'm not asking you what lawyers</p>

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<p>1 would have said to you.</p> <p>2 Who at Braun provided you the</p> <p>3 information that you just have been discussing</p> <p>4 regarding the prototype and Dr. Prahl's original</p> <p>5 work?</p> <p>6 A. The information that the starting point of</p> <p>7 the work of Gebhard Braun was this prototype came</p> <p>8 from Gebhard Braun.</p> <p>9 Q. Oh, so Mr. Braun informed you that --</p> <p>10 A. No, we asked him. Mr. Hoeser made a</p> <p>11 timeline history of all that stuff, and at some</p> <p>12 point of this timeline, we had this sample,</p> <p>13 this -- and then we asked where was the starting</p> <p>14 point of Mr. Hoeser, and he said, Well, I started</p> <p>15 with a sample, and so it came up that we personally,</p> <p>16 Uwe Sievers and me, draw the conclusion that he</p> <p>17 cannot be the sole inventor.</p> <p>18 MR. SHIMOTO: Let me mark as</p> <p>19 deposition Exhibit No. 119 B0243 to B0247.</p> <p>20 (Exhibit No. 119 marked</p> <p>21 for identification.)</p> <p>22 Q. Is this the timeline that you were</p> <p>23 referring to?</p> <p>24 A. No, I'm referring here to this first</p>	<p>Page 113</p> <p>1 And then I don't know when that was,</p> <p>2 Mr. Braun, Gebhard Braun told -- told us at the</p> <p>3 beginning, Dieter Pahl gave me this prototype, and</p> <p>4 then -- then the conclusion that is --</p> <p>5 (The witness speaks</p> <p>6 with the interpreter.)</p> <p>7 THE INTERPRETER: It was -- it was a</p> <p>8 healthy sense.</p> <p>9 A. Just natural thinking that he could not be</p> <p>10 the sole inventor, that was the reason why we</p> <p>11 started digging, looking, asking Mr. Pahl, before we</p> <p>12 had no -- no --</p> <p>13 (The witness speaks</p> <p>14 with the interpreter.)</p> <p>15 THE INTERPRETER: No motivation.</p> <p>16 A. No motivation to talk to Mr. Pahl, so</p> <p>17 that's how it came up.</p> <p>18 Q. Were you surprised when you learned</p> <p>19 about --</p> <p>20 A. Yes, we were surprised, and this</p> <p>21 is -- it's an exceptional case.</p> <p>22 Q. I mean, did you ask -- at that time, did</p> <p>23 you ask Mr. Braun why -- why he had not -- why</p> <p>24 Dr. Paul was not ever named --</p>
<p>1 prototype here (indicating).</p> <p>2 I'm not sure whether it's this one the</p> <p>3 picture's on, but we had this prototype where we had</p> <p>4 this cradle structure the shaver head was put in,</p> <p>5 there was a blower, I think also a heating unit, and</p> <p>6 all the features of this device were also</p> <p>7 incorporated in some claims of the 328 or of one</p> <p>8 patent.</p> <p>9 Q. Yes.</p> <p>10 A. That, and in addition, Gebhard Braun said,</p> <p>11 When I started working on the clean and charge</p> <p>12 device, this was what maybe Dieter Pahl gave me</p> <p>13 then, and so that --</p> <p>14 Q. Let me see if I understand the chronology.</p> <p>15 So first Mr. Hoeser provided a</p> <p>16 timeline to you; is that correct, or --</p> <p>17 A. Well, he was developing that timeline, and</p> <p>18 we saw the first time this prototype, let me say how</p> <p>19 long is the litigation running now?</p> <p>20 Two years ago or one and a half years</p> <p>21 ago, I personally saw this prototype the first time</p> <p>22 and Uwe Sievers as well and we were -- Uwe more than</p> <p>23 we was deeply involved in all collecting all these</p> <p>24 documents and that stuff together.</p>	<p>Page 114</p> <p>1 A. Well, that came later, and I thought you</p> <p>2 made the deposition with Dieter Pahl and Mr. Braun</p> <p>3 and they explained that, I think, deeply.</p> <p>4 Q. Yes. When -- when exactly did you, or not</p> <p>5 exactly. When roughly did you learn of -- or learn</p> <p>6 of the prototype from Mr. Braun?</p> <p>7 A. Well, it was in connection with the</p> <p>8 discovery here, and maybe it's -- oh, good, I made</p> <p>9 this declaration a year ago, approximately, in July</p> <p>10 (indicating), so maybe months or somewhat earlier</p> <p>11 when we got -- yes.</p> <p>12 MR. SHIMOTO: I'd like to mark as</p> <p>13 defendant's deposition Exhibit No. 120 Braun's</p> <p>14 answers to then Remington's now Rayovac's first set</p> <p>15 of interrogatories.</p> <p>16 (Exhibit No. 120 marked</p> <p>17 for identification.)</p> <p>18 Q. I'd just like to direct you to the answer</p> <p>19 to interrogatory No. 2.</p> <p>20 Take whatever time you need to, I</p> <p>21 don't know if you've seen this before.</p> <p>22 A. No.</p> <p>23 Q. Interrogatory 2 asked questions regarding</p> <p>24 conception --</p>

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<p>1 A. Just a moment.</p> <p>2 Q. Yes, sure, take your time, page 4.</p> <p>3 Interrogatory No. 2 asks questions regarding</p> <p>4 conception dates for claims.</p> <p>5 A. Yes.</p> <p>6 Q. And then there are answers given or</p> <p>7 answers provided by Braun, and at the end, you were</p> <p>8 listed as someone with knowledge regarding the</p> <p>9 conception dates provided in the answer.</p> <p>10 (Pause.)</p> <p>11 A. Yes. Okay. What's your question?</p> <p>12 Q. My question is: What knowledge do you</p> <p>13 have regarding the conception dates provided in</p> <p>14 response to interrogatory No. 2?</p> <p>15 A. I think I'm listed here falsely, so I</p> <p>16 could only give any information which I got in the</p> <p>17 last one year, one and a half year with regard to</p> <p>18 this litigation, but at that time all this actually</p> <p>19 happened, I have no access to this information, so I</p> <p>20 was not involved in it, only the last one or one and</p> <p>21 a half years along the litigation is running.</p> <p>22 Q. That's fine, I understand.</p> <p>23 MR. SHIMOTO: I'll just mark these all</p> <p>24 now.</p>	<p>Page 117</p> <p>1 1 Braun prior to it being produced to Rayovac?</p> <p>2 A. It was in the possession of Dieter Pahl, I</p> <p>3 think this is the one of the prototype that I</p> <p>4 mentioned.</p> <p>5 Q. So this -- this document was provided by</p> <p>6 Dietrich Pahl?</p> <p>7 A. Yes, I think so, maybe it was also in</p> <p>8 other files, but again, what do you -- when it was</p> <p>9 produced one and a half years ago --</p> <p>10 Q. Yes, well, let me represent -- the</p> <p>11 questions I'm asking is when people went out and got</p> <p>12 these documents, when the lawyers came and collected</p> <p>13 these documents --</p> <p>14 A. Yes, in what files they were?</p> <p>15 Q. Yes, were they found. I'll represent to</p> <p>16 you that I asked Dr. Pahl if he provided this</p> <p>17 document in connection with this litigation, and he</p> <p>18 said no, so my question is: Who at Braun had this</p> <p>19 document when it was given to the lawyers?</p> <p>20 A. I cannot -- I don't know, and I guess</p> <p>21 maybe Mr. Hoeser.</p> <p>22 Q. So this document was -- well, did you</p> <p>23 perform any investigation to determine who would</p> <p>24 have had this document?</p>
<p>1 A. Who put me in here?</p> <p>2 MS. WENDLANDT: Just to clarify, I</p> <p>3 think your name was put in there because you are the</p> <p>4 repository of H.D. Klauer's knowledge in the patent</p> <p>5 history.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. SHIMOTO: Okay, would I like to</p> <p>8 mark as defendant's deposition Exhibit No. 121</p> <p>9 documents bearing the Bates range B004615 to</p> <p>10 B004617, both German and English.</p> <p>11 (Exhibit No. 121 marked</p> <p>12 for identification.)</p> <p>13 MR. SHIMOTO: I'll also mark -- this</p> <p>14 is a big document -- a document bearing the Bates</p> <p>15 No. B1064 as defendant's deposition Exhibit No. 122,</p> <p>16 a very large schematic.</p> <p>17 A. Yes.</p> <p>18 (Exhibit No. 122 marked</p> <p>19 for identification.)</p> <p>20 Q. Okay. Starting with the -- I'll start</p> <p>21 with the schematics so we can get that out of your</p> <p>22 way, B0164.</p> <p>23 A. Okay.</p> <p>24 Q. My question is: Who had this document at</p>	<p>Page 118</p> <p>1 A. No, I didn't do that. I thought it was</p> <p>2 from Mr. Pahl, but now when you're telling me it's</p> <p>3 not from him, well, he -- then it must be</p> <p>4 Mr. Hoeser, the person who should have all of this</p> <p>5 material in his files.</p> <p>6 Q. Okay. So I take it, then, that a copy of</p> <p>7 this document was not at the -- within the patent</p> <p>8 department's files?</p> <p>9 A. No, no, I don't think so.</p> <p>10 Q. Are you sure whether this was in the</p> <p>11 patent department's files?</p> <p>12 A. In the patent department's files regarding</p> <p>13 the prosecution, or -- or anything else? We have</p> <p>14 checked our files.</p> <p>15 The prosecution files are all with</p> <p>16 you, and I think this document is not in the</p> <p>17 prosecution files, and we have no additional files.</p> <p>18 We could have prior art searches of</p> <p>19 files at that time, and it was not there because we</p> <p>20 had no files at that time regarding prior art</p> <p>21 searches, so I can say it was not in the patent</p> <p>22 department files.</p> <p>23 Q. Okay. With respect to -- well, now you</p> <p>24 can put this away (indicating).</p>

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<p style="text-align: right;">Page 121</p> <p>1 (Pause.) 2 Q. B004615, it's the memo, I believe, from 3 Mr. Braun and Mr. Smetana to -- 4 A. 4615, mm-hmm, yes. 5 Q. These are stapled together as actually two 6 memos. 7 A. Yes. 8 Q. From whose -- and I'm talking now about in 9 connection with this litigation, from who -- from 10 whom was the Smetana-Braun memo collected? 11 A. I think it was collected from Mr. Smetana, 12 he -- I know that he -- he was also at the 13 deposition with you, and he is -- he -- he wrote 14 this -- this -- this memo, and so I think it was 15 collected from him. 16 Q. Did you ask him? 17 A. No, I didn't. 18 Q. Then I'll represent to you as well that I 19 asked Mr. Smetana at his deposition if he presented 20 this memo to the lawyers, and he said no, 21 so -- but -- do you know if this would have been in 22 the files of the patent department? 23 A. No, I don't think so because who, in 24 addition to Mr. Braun and Mr. Smetana, this memo was</p>	<p style="text-align: right;">Page 123</p> <p>1 (Discussion held off the record.) 2 THE VIDEOGRAPHER: One moment. We're 3 back on the record, the time is 12:36. 4 MR. SHIMOTO: With the exception 5 of -- I would like -- well, there was a few 6 questions I had to ask that we were unable to ask, 7 but with the proviso that somehow we can work out 8 some way to get answers to those, I have no further 9 questions for you today, thank you. 10 THE WITNESS: Thank you. 11 MS. WENDLANDT: I have no questions. 12 THE VIDEOGRAPHER: This marks the end 13 of videotape No. 2 in the deposition of 14 Wolfgang Vorbeck, we're going off the record, the 15 time is 12:36. 16 (Whereupon the deposition 17 concluded at 12:36 p.m.) 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 122</p> <p>1 disputed to Dr. Pahl and Dr. Jung and not to the 2 patent department, and regarding the contents, I 3 see -- I see no issues why it should have been 4 transferred to the patent department. 5 Q. With respect to the next page, which is 6 B004617 -- 7 A. Yes. 8 Q. -- have you seen this document before? 9 A. Yes. 10 Q. Do you know from whose files this document 11 was collected in connection with this litigation? 12 A. It's from the files of Mr. Hoeser. 13 Q. So I take it this document also would not 14 have been with the patent department? 15 A. No. 16 (Pause.) 17 A. It's -- it's for VDE, that is something 18 corresponding to the underwriter laboratory here in 19 the US, why -- you cannot put all the stuff to 20 patent department, so -- 21 MR. SHIMOTO: Let me take a 22 five-minute break, I think we might be finished up. 23 THE VIDEOGRAPHER: Going off the 24 record, the time is 12:31 p.m.</p>	<p style="text-align: right;">Page 124</p> <p>1 Commonwealth of Massachusetts 2 Suffolk, ss. 3 4 I, Melissa Z. Comins, Certified Shorthand 5 Reporter No. 132293 and Registered Professional 6 Reporter and Notary Public in and for the 7 Commonwealth of Massachusetts, do hereby certify 8 that WOLFGANG VORBECK, the witness whose deposition 9 is hereinbefore set forth, was duly sworn by me and 10 that such deposition is a true record of the 11 testimony given by the witness. 12 I further certify that I am neither related to 13 or employed by any of the parties in or counsel to 14 this action, nor am I financially interested in the 15 outcome of this action. 16 In witness whereof, I have hereunto set my hand 17 and seal this 22nd day of August 2005. 18 19 20 21 Notary Public 22 CSR # 132293 23 My commission expires: 24 June 13, 2008</p>

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COMMONWEALTH OF MASSACHUSETTS	
2	
3	I, WOLFGANG VORBECK, do hereby certify that I
4	have read the foregoing transcript of my testimony
5	given in the aforementioned matter, and further
6	certify that said transcript is a true, accurate and
7	complete record of said testimony.
8	
9	Signed under the pains and penalties of perjury
10	this day of , 2005.
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1	Page 126
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24	SIGNATURE/DATE: _____

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